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FEDERAL EMPLOYEE COMPENSATION EQUITY ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 552

TO IMPROVE THE EFFICIENCY OF THE FEDERAL CLASSIFICATION SYSTEM AND TO PROMOTE EQUITABLE PAY PRACTICES WITHIN THE FEDERAL GOVERNMENT AND FOR OTHER PURPOSES

APRIL 22, 1987

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CONTENTS

Opening statements:

	Page
Senator Pryor	4
Senator Bingaman	5
Senator Stevens	12
Senator Sasser	12
Senator Trible	12

WITNESSES

April 22, 1987

Hon. Daniel J. Evans, U.S. Senator from the State of Washington	1
Constance Horner, Director, Office of Personnel Management, Washington, DC	6
Rosslyn S. Kleeman, Associate Director, General Government Division, General Accounting Office, Washington, DC, accompanied by Dr. Curtis W. Copeland, Evaluator, and Lynn Gibson, Office of General Counsel	10
Eileen Stein, chairperson, National Committee on Pay Equity; and James M. Peirce, president, National Federation of Federal Employees, accompanied by Beth Moten, legislative liaison	15
Hon. Alan Cranston, U.S. Senator from the State of California	19
Barbara Curtis, RN, board of directors, American Nurses Association; and Robert M. Tobias, president, National Treasury Employees Union	20
Bobbi Thompson, president, Aviation Sales, for the U.S. Chamber of Commerce; Susan Vergeront, Wisconsin State Assembly, for the National Association of Manufacturers; and Lawrence Z. Lorber, of Breed, Abbot & Morgan, for the American Society for Personnel Administration	27

Alphabetical List of Witnesses

Curtis, Barbara, R.N.:	
Testimony	20
Prepared statement	98
Cranston, Hon. Alan: Testimony	19
Evans, Hon. Daniel J.: Testimony	1
Horner, Constance:	
Testimony	6
Prepared statement	50
Additional comments	60
Letter to Senator Pryor, June 24, 1987	64
Responses to written questions submitted by Senator Stevens	66
Kleeman, Rosslyn S.:	
Testimony	10
Prepared statement	68
Responses to written questions submitted by Senators Pryor and Stevens	77
Lorber, Lawrence Z.:	
Testimony	27
Prepared Statement	161
Moten, Beth: Testimony	15
Peirce, James M.:	
Testimony	15
Prepared statement	88
Stein, Eileen:	
Testimony	15
Prepared statement	80

Page

Thompson, Bobbi:
Testimony 27
Prepared statement 119
Tobias, Robert M.:
Testimony 20
Prepared statement 111
Vergeront, Susan:
Testimony 27
Prepared statement 149

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Text of S. 552 39
Prepared statements of witnesses 50
Statements and letters from:
Department of Justice 171
American Association of University Women 181
American Federation of State, County and Municipal Employees, AFL-CIO 188
Federally Employed Women 197
National Federation of Business and Professional Women's Clubs, Inc 207
Service Employees International Union, AFL-CIO 211

FEDERAL EMPLOYEE COMPENSATION EQUITY ACT OF 1987

WEDNESDAY, APRIL 22, 1987

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:15 a.m., in room SD-342, Dirksen Senate Office Building, Hon. David Pryor, Chairman of the Subcommittee, presiding.

Present: Senators Pryor, Trible, and Bingaman.

Senator PRYOR. The Committee will come to order. Senator Evans, we welcome your presence. We know that you are one of the chief co-sponsors, with Senator Cranston, of S. 552, the Federal Employee Compensation Equity Act of 1987. We welcome you, Senator Evans, as our first witness this morning.

TESTIMONY OF HON. DANIEL J. EVANS, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator EVANS. Thank you, Mr. Chairman.

This bill, and my interest in pay and pay classification goes back a long way to the early days as governor of the State of Washington, where I think it safe to say Washington was a pay-setter state in the development of some of these concepts, although I must say it took a considerable length of time after I left office as governor it took a long Federal court case, and then finally, the current governor and legislature implementing the results of studies that were conducted long ago, and I think with extraordinarily good results.

In fact, in state after state and in community after community across this country, where pay classification studies have been done and where the results have been carried out, I think they have found those results remarkably beneficial.

There have been some questions raised concerning the act I introduced. In fact this was the very first act I introduced after becoming a United States Senator, and I'd like to briefly discuss some of the changes which make it a better bill. Additionally I hope they will respond to some of the concerns that were expressed in the last Congress.

In that Congress, Senator Cranston and I introduced S. 519, calling for a study of Federal pay practices. During a number of hearings on that measure, this subcommittee received testimony from both advocates and adversaries of S. 519. Senator Cranston and I

took an active interest in those hearings. We reviewed the comments and criticisms, we asked GAO to do follow-up research and we sat down and redrafted the legislation to take into account those concerns.

Our efforts at every step were bipartisan, as I strongly believe they should be. I suppose, Mr. Chairman, that some of our witnesses today will suggest that this issue is either politically motivated or partisan in nature. Let me stress at the outset, and in anticipation of these views, that there is nothing partisan about discrimination. It is intolerable in whatever form it exists and it is our responsibility, on both sides of the aisle, to eradicate it from Federal pay practices.

In this spirit of bipartisanship, Senators Cranston, Stevens, House leaders and I requested GAO to provide us with the necessary structure and methodology appropriate for studying the Federal classification system. GAO's recommendations are embodied in S. 552. Let me address briefly, the major revisions we have made.

First, the scope of the study will cover Federal employees in the wage grade system and the general schedule. The purpose of the study will be to assess whether the classification system is living up to its own enumerated objectives. I refer specifically to Section 4 of the bill. This section has been rewritten to make it clear that we are only concerned with the merit system principles of Title 5. We do not wish to implicate title VII of the Civil Rights Act within the scope of this study, which I think was a fair criticism made of S. 519 in previous hearings.

I do not believe it is either desirable or necessary to reference title VII as part of the scope of the study. According to a recent GAO report, the implementation of Title 5 objectives should result not only in equal pay for different work which is valued equally in terms of difficulty, responsibility and qualification requirements, but proportionate pay for work that differs in value. Thus, under the new Section 4, the study would examine whether the Federal pay system is achieving these statutorily required results.

I might add Mr. Chairman, parenthetically, that I do not believe a really thorough analysis of the entire Federal pay schedule has been done in the 60-some years of our Federal pay merit system.

Another legitimate concern was expressed over the study's methodology. GAO addressed this question and recommended that two means be used because they were best suited to studying the Federal classification system. They are job evaluation and economic analysis. S. 552 requires that both these methods be employed.

Economic analysis can be valid in exposing some of the abnormalities and distortions present in the external marketplace which may account for some of the wage differentials between occupations. The internal alignments of the some 7,000 job types within the Federal classification system, however, can best be examined using job-content analysis.

I feel compelled to comment briefly on job evaluation since it has been subject to much criticism by pay equity opponents, most of which I find extraordinarily unenlightening. These adversaries would lead you to believe that job evaluation is some new and strange device, untried and untested. Well, it is hardly that. Job evaluation was born in the private sector, it has been used there

for years. In fact, it was the genesis of the work we did in the State of Washington, after I contacted some of the largest industries in the state and asked them what they would suggest for job analysis of the state system.

Today, it is not surprising that many companies have incorporated the concept of pay equity within their job evaluation systems and find it easily done.

According to these skeptics, job evaluation is also subjective and therefore inherently unreliable. This characterization, I think, is misleading at best. GAO found that job content analysis could be used responsibly and effectively as a measuring stick of the relative worth of various jobs. It went on to make some constructive suggestions on how to use this method most fairly.

For example, periodic review and updating of job descriptions to ensure accuracy and the use of weighting schemes which do not simply replicate existing wage hierarchies were just a few of the many recommendations made to improve the use of job evaluation—especially as it would be used to study the Federal work force.

There has been a continuing concern that the Federal government might somehow be bound irreversibly to the results of any such study. While I can understand this concern I do not believe the Federal government could be held liable for discrimination under existing law merely by conducting a study of its own classification system. No Federal court in this country has allowed a plaintiff to establish a prima facie case of discrimination on the results of an employer study, alone.

The requirements of our civil rights statutes are clear: there must be a showing of intentional action by an employer to discriminate against his employees. The courts have received study results, along with a plethora of other data, as evidence of discriminatory intent. Alone, however, such results are not conclusive of such intent. We do want to make the purpose of this study clear, however. That is why we have inserted language in Section 5 stating explicitly that the results of this study are advisory in nature only. I think that is plenty sufficient. I have great confidence that the Federal government and this Congress, given the results of a legitimate study, would move promptly to take them into account in their pay systems.

A similar concern has been raised that rectifying any discrimination in the Federal classification system will cost an exorbitant amount of money. It is important to remember that we are convening a study to seek facts, not prejudge results. We are not starting with the conclusion that there is discrimination. We are trying to ascertain whether there is a problem. That is the first and the most critical step.

If, however, misclassifications are found, back pay is not an available remedy under existing law. The Supreme Court, in *U.S.* v. *Testan*, held that there is no entitlement to back pay for a period of wrongful classification under Title 5.

Mr. Chairman, this outlines the major revisions to S. 552. I commend the Subcommittee for its willingness to take decisive action on this important legislation. Senator Cranston and I stand ready to work with you and other Committee members so that S. 552 can

be reported to the full Senate with a favorable recommendation as soon as possible.

I would say, in closing, Mr. Chairman, that I can think of no better Congress than this 100th Congress, dedicated to the 200th anniversary of our Constitution, to fully implement in our Federal pay set up some of those very principles that are embodied in our Constitution.

Senator PRYOR. Senator Evans, thank you.

You are quite an authority on this subject and we appreciate your guidance and the leadership role that you have shown in the State of Washington, when you were governor. We deeply appreciate your coming this morning.

Senator Bingaman, I have foregone my opening statement to accommodate Senator Evans' schedule, but I will make about a two minute statement at this point.

By the way, Senator Evans, should you like to join us today, we would welcome your attendance for the rest of the witnesses and feel free to ask any of those witnesses any questions. So, if you would like to join as a member of the Subcommittee, feel free to do so.

Senator EVANS. I would like nothing better, Mr. Chairman, but we have both markups in Foreign Relations and in Energy and Natural Resources which is already one too many.

Senator PRYOR. And there is another one in the Finance Committee starting in a few moments.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Our Federal personnel system is undoubtedly the largest and most complex personnel system in existence. Over the last 60 years it has endured major changes in government and in society as a whole. For many years, the system weathered the storm. But as the pace of change accelerated in recent years, the system began to show signs of wear and tear and more often than not, a patch job would solve the problem of the day.

However, as I have learned since resuming the Subcommittee chairmanship earlier this year, the stresses on both job classification and compensation are of such magnitude that a cursory look or a quick fix approach to problem solving is no longer a viable option; neither can we ignore the situation.

I have been told by a number of my colleagues, including several who serve on this Subcommittee, by employee groups, and even the Administration, that reform of the pay and classification system is a must.

I view today's hearings as the first in a series that will deal with this issue and with related matters such as the contracting out of government functions. Our focus today is on one aspect of the need for reform that has already received considerable time and attention—the question of pay equity.

The bill before us today, S. 552, the Federal Employees Compensation Equity Act of 1987, would establish a commission of nine members and provide for a study to determine the extent to which pay variances between the sexes and by race are due to discriminatory factors inherent in our current job classification system.

We are building today on four days of hearings chaired by Senator Stevens in 1985. Suggestions made in those hearings, and in others held by the House subcommittees have led to some changes to the pay equity bill considered by the 99th Congress. This hearing this morning is intended to insure that everyone has a chance to get their views on the record and discuss the need for further refinements.

I would like to reiterate that I view this particular matter as merely a piece of the puzzle, a symptom of a larger problem in the Federal personnel system. Whether the problems are real or whether they are perceived, we must address these concerns to ensure the smooth, efficient functioning of our Federal government.

Senator Bingaman.

OPENING STATEMENT OF SENATOR BINGAMAN

Senator BINGAMAN. Mr. Chairman, I do have an opening statement that I will not read but ask that it be inserted into the record. I commend you for holding this hearing on this important issue and I commend Senator Evans and Senator Cranston for this important legislation.

[Senator Bingaman's prepared statement follows:]

PREPARED STATEMENT OF SENATOR BINGAMAN

Mr. Chairman, I want to thank you for holding this hearing on S. 552, the Federal Employee Compensation Equity Act of 1987 sponsored by Senators Cranston and Evans. As a cosponsor of this important legislation, I welcome this opportunity to hear from both supporters and opponents of this measure.

This measure would require an independent consultant to conduct a study of pay equity in the federal workplace using "objective job-evaluation and economic analysis techniques." S. 552 also would establish a nine member Commission on Compensation Equity to serve in a solely advisory role to the consultant. The findings of this study would be submitted within 18 months of enactment to Congress and the Director of OPM who would then have 90 days to respond to the recommendations of the Committee.

I believe the changes which have been made in this session's version of this bill make it a stronger and more equitable piece of legislation. It is important, however, that all interested parties' concerns be fully addressed and I hope this hearing will provide just such an opportunity. I look forward to the testimony of today's witnesses and panelists.

Thank you, Mr. Chairman.

Senator PRYOR. We announced earlier, Senator Bingaman, that Senator Cranston is in a leadership meeting. We think that he will come forward soon and appear at the witness table and when he does we will allow him the opportunity to testify.

Thank you, Senator Evans. Do you have any other comments at this time, before we call our witnesses?

Senator EVANS. No, sir. Thank you, Mr. Chairman.

Senator PRYOR. Thank you, sir.

Now we would like our first witness, Ms. Constance Horner, Director of the Office of Personnel Management.

First, Mrs. Horner, let me say and I say this in all due respect, we have seen your opening statement. It was in the Washington Post this morning. I would suggest, in as much as we have read your statement in the Post, that you merely summarize your statement, if you would, at this time.

TESTIMONY OF CONSTANCE HORNER, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, WASHINGTON, D.C.[1]

Mrs. HORNER. Mr. Chairman, thank you very much for inviting me to appear today.

We have been doing some work on this issue over the last few weeks and sharing our findings rather broadly. I apologize at the implication in this morning's column that testimony had been shared, as it most definitely had not been. That would be a serious discourtesy to the Committee, and I want to clear up any impression that we have done that.

The Administration is a strong advocate of equal pay for equal work and does not accept wage discrimination based on sex, race, or any illegal factors. However, we do strongly oppose the enactment of S. 552. We do not believe that it serves the best interest of women and other employees in the Federal government, and we do not believe that it would result in a system which would offer pay equity for Federal employees.

In a minute, I will speak to several of the specifics in the bill, but first I would like to point out a success story that has been lost in the continuing debate over pay equity. We have been looking at a glass as half-empty and draining, rather than half-full and filling.

Women, in dramatic numbers, are moving into non-traditional and higher paying occupations in the Federal government. The Federal government has emphasized equal employment opportunity and because of this opportunity, joined with women's occupational decisions, attachment to the work force, and personal preferences, these two things together have created real progress in narrowing the male-female wage gap in the Federal work force.

I will just give you one example from my prepared statement and skip the rest, but I would encourage others to pay attention to these statistics because they are surprising. In 1976, well over half of the women employed by the Federal government were in clerical jobs, while only one-fifth were in professional and administrative jobs. By 1986, last year, only 41 percent of women were clerical employees, while the number of professional and administrative women had increased to 33 percent. That is a 65 percent jump.

Most encouraging was the influx of women under 35 years of age, for obvious reasons of change of attitude and opportunity, into these higher paying occupations that were previously dominated by men. We have some rather substantial statistics on that.

I will just give you one. Sixty percent of the young technical workers in the United States government are women. This has been, again, as a result of women taking advantage of opportunities that the Federal government does offer. An example is that more than half of all the female employees hired back in 1976 have now moved into other, higher paying occupational groups. There is a remarkable level of upward mobility for clerical employees in the Federal government.

Now, there is still a wage gap. We know there is. It is well publicized. This pay differential has sometimes been described as the result of discrimination, but the aggregate number actually says

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[1] See p. 50 for Mrs. Horner's prepared statement.

very little, if anything at all, about discrimination. It says far more about the occupational choices of men and women, differences in educational attainment, and differences in years of service.

If we look at groups where men's and women's occupational choices and work force attachment show greater similarity—for instance, those employees under age 35—we see greater progress in narrowing that gap.

For example, female blue collar workers earned 89 percent of what their male counterparts earned, while female professionals earned 90 percent, and administrative and technical employees, 91 percent. This, of course, is as a result of the passage of time under an evolving social climate.

Clerical workers, interestingly, earned 104 percent of the wages of their male counterparts. Now it is possible that when their male counterparts have put in the time and made the commitment to clerical work, they will pull even with the women in that field, in terms of pay.

Women are advancing into higher grade levels in the government and we have a number of statistics on this. One thing that is rather interesting is that at the higher grade levels, above GS-12, women get higher performance ratings than their male colleagues and are promoted at a faster rate. In our view, this demonstrates the necessity for a more performance-based and less seniority-based system. Seniority works against women who are new to this world of work.

We believe the pace of change is accelerating. We believe that our open employment system, together with women's higher career expectations and changing job preferences, are working to move women into higher paying occupations and grade levels. We expect this trend to continue and to accelerate.

Viewed in this context, S. 552 is counterproductive. The premise on which it is based is faulty, the solution is unjustifiable. We have seen this movement of women into higher paying occupations and we absolutely oppose a system which would reinforce sexual stereotypes, deter occupational change and retard career advancement by women in the Federal work force by artificially inflating Federal pay in these occupations.

It would, in effect, threaten to re-ghettoize women under a kind of separate but equal regime. It would pay them more to stay where they are.

Senator PRYOR. Let me stop you there, if I might.

We are not talking about enacting some law on comparability. We are talking about setting up a commission to conduct or to authorize a study. You sound like there is already a presumption that that study is going to be weighted one way or the other. Is that correct?

Mrs. HORNER. Mr. Chairman, that is how I view the design of this bill. If I may, I would like to explain why. According to the bill, as OPM Director, I am required to appoint three members to this commission. They must be the heads of the three largest Federal employee unions.

Those union heads, two of those three I know, are clearly on the record as contending that there is discrimination in Federal pay and classification. They have already reached that conclusion and

they have employed extensive rhetoric over the last few years to say that they have reached that conclusion.

Therefore, I think the study in its design requires a certain outcome. They are going to be selecting the one single consultant who will do this evaluation. I frankly think it is very biased and because of that, I think the conclusions are predictable and also will be flawed.

Senator PRYOR. Is it the official position of this Administration that there is no discrimination?

Mrs. HORNER. It is the official position of this Administration that the various bills proposing this study are designed to produce the following result: a pay differential—which we all acknowledge exists—which is attributable to discrimination. In other words, if we cannot identify some other reason for a differential, we are going to call the reason discrimination and adjust pay as a result, on the theory that it is discrimination causing the gap.

We do not believe that any of the bills proposed suggest, in their design, any other outcome than that. That is why we are very distressed about it.

Senator PRYOR. As you may know, the General Accounting Office disagrees strongly with the OPM figures. The GAO says that 70 percent of women remain in clerical office services.

Mrs. HORNER. Mr. Chairman, these figures we have just produced are very new, based on the latest data. I understand they may not have been shared by our agency with GAO and we would be happy to explain to GAO the source of our figures. We are quite confident that they are correct.

Senator PRYOR. We would also like to request that the staff of the Subcommittee and the members of the Subcommittee be give a copt of those figures and how they were calculated.

You discuss some of the problems that the government has had with the classification and pay system relying far too heavily on evaluating relative differences within the system, Ms. Horner. As you move forward in remedying this situation, let me ask this question, would not a pay equity study provide you with additional or helpful information?

Mrs. HORNER. No, Mr. Chairman, I do not believe that it would. We are firmly convinced that reform of the pay and classification system requires less emphasis on internal equity and more emphasis on the factor which has been overlooked but which is necessary to any fair and useful compensation system, which is the ability to discriminate between employees who do an extremely good job and those who do not, and having greater flexibility for Federal managers to pay employees more when they need to, in order to hire very good employees.

We think that a study like this, because it focuses on a faulty assumption of discrimination for any unexplainable gap, will be misleading and retrogressive.

Senator PRYOR. I would like to just say, Ms. Horner, that I am not a cosponsor of this legislation and I may become one later. I am really trying to find some facts, and that is exactly what this hearing is about. I think that your operation has developed some very different figures and very different conclusions than the General Accounting Office has come forward with.

Therefore, I think that even strengthens the necessity of some independent group. Now my point is this: I do not have a very good relationship with consultants generally. In fact, some years ago, I almost tried to put them out of business. We still spend about $10 million a day on consultants for the Federal government, which I think is absurd and almost sinful.

So hiring a consulting firm to do a study does really not excite me a great deal. However, I do think that some third party is going to have to come in, address this obvious disparity, and bring us some concrete figures that the Senate and the House, faced with the challenge of trying to do something about this system, can rely on.

So today, we have conflicting reports the statistics we are using in evaluating this legislation. I wanted to emphasize this for the record.

I also want to say that I think it is a strange position for the Office of Personnel Management to take. Basically the Office of Personnel Management is sort of the advocate, I would say—I think that is its original intent—for the Federal employee and I do not know that you are advocating what most employees believe right now.

Mrs. HORNER. Mr. Chairman, this bill contains a prohibition against lowering pay as a result of the study. In other words, if the study were to find that there was a problem, the only outcome could be to raise pay, not to lower pay. Now to me, that suggests a bias against the general public and against the taxpayer that has to be seriously considered.

I am an advocate for the quality of life and compensation which surrounds Federal employees because my responsibility is to make sure that we recruit and keep very good people. That is why I have proposed reforms, to improve that situation.

But I also have to consider my responsibility to the taxpayer, to ensure that we do not take the easy political way out and raise pay just because there is some strong contending force that wants to do that.

We need to be able to respond more to the market. OPM did raise clerical pay in the Washington metropolitan area a few weeks ago. The reason was that we observed we were not able to recruit and especially retain clerk typists of the quality and quantity we needed. We need to be able to respond more that way.

If we can get more market responsiveness into the system, then, if women are in occupations where there's a shortage, they are going to be paid more.

Senator PRYOR. I do not think that S. 552 is taking off on a new and uncharted course with this particular language. It has come to my attention that the language in S. 552 actually was lifted directly from the Equal Pay Act of 1963, so it is not some new harebrained idea, you know, to use this sort of an approach. This is an old approach, dating back to 1963.

Mrs. HORNER. We have statutes, over the years, that have described the Federal pay and classification system and absolutely insisted that it be fair in its application. We have had, in the last 15 years, about one study every two years. Not one of those studies has ever contended there was sex bias or race bias in our system.

We have also a continuing process of review, which involves review of proposed classification standards by agency officials, by civil rights and EEO groups; unions look at them, professional societies look at them, experts look at them. Nobody is telling us, when they look at these, that there is sex or race or ethnic bias embedded in them. No one has said that is the case.

Senator PRYOR. Well, I want to thank you for your testimony this morning and I know I speak for all members of the Subcommittee. Let me just state, for the record, that it seems to me the major concern you are expressing, Mrs. Horner, is that you are concerned about the makeup of the commission. You are not saying that there is not a problem. You are worried about the balance of the commission. That is what I understand you to be saying.

I am very hopeful that you will, for the record, make a suggestion on how you think a commission, if we enact a proposal like S. 552, would be made up. I would like to know what you believe would be a proper makeup, representing a fair approach that would result in a study that we could all base legislation on.

Mrs. HORNER. Mr. Chairman, I do appreciate the opportunity you have given me to talk about this, and I do have to say also, in closing, that I do have theoretical concerns as well as concerns relating to the composition of the commission, but I thank you for this opportunity.[1]

Senator PRYOR. We thank you very much. Thank you.

Our next witness is Mrs. Rosslyn Kleeman, Associate Director, General Government Division of the General Accounting Office. I believe that Mrs. Kleeman is accompanied by Dr. Curtis Copeland and by Ms. Lynn Gibson, Office of General Counsel.

I would like for you, if you would please, Mrs. Kleeman—because we do have several witnesses and I know I have got to go to a trade markup fairly soon—to summarize your statement and limit it to five minutes.

TESTIMONY OF ROSSLYN S. KLEEMAN, ASSOCIATE DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, WASHINGTON, D.C.,[2] ACCOMPANIED BY DR. CURTIS W. COPELAND, EVALUATOR, AND LYNN GIBSON, OFFICE OF GENERAL COUNSEL

Mrs. KLEEMAN. Fine. Let me just bring out a few of the high points that we mentioned in the written testimony.

First let me say that while we take no position on the desirability of the Federal pay equity study, we do believe that S. 552 reflects many of the suggestions that we made in our Options report in 1985 on how a study should be done.

For example, we suggested a combination of two approaches, economic analysis and job content analysis, be used in any study, so we believe the bill's proposal to use those two techniques is a good one.

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[1] See p. 64 for a letter to Senator Pryor from Mrs. Horner, June 24, 1987.
[2] See p. 68 from Mrs. Kleeman's prepared statement.

Another provision, the bill's designation of a commission to oversee the proposed study, is generally consistent with our earlier recommendations in the 1985 study.

One possible concern that we have is that S. 552 does not mandate that the commission membership be diverse. From past experiences of the states, we found that studies are considered more objective and their recommendations are more broadly accepted if commission members represent many points of view on the pay equity issue.

Another suggestion in our Options reports was that the commission call upon experts for technical guidance on policy issues. Although the bill does not specifically preclude the use of experts if they are needed, it does not call for forming such a group, and we believe one might be valuable for technical points.

Also, the study called for in S. 552 would analyze the classification, grading and pay-setting processes within and between the white collar system, the GS system, and the Federal wage system, the blue collar system. This would require the development of a single job evaluation technique to be used for both systems.

I do not believe this should be a major problem. In fact, we found that single evaluation systems were used in many state personnel systems. Also, a study of the sort contemplated by S. 552 could address general classification and compensation issues. OPM and others have often questioned the accuracy of the current position classifications and the assignment of grade levels within those classification system.

Finally, let me reiterate a concern that we expressed in our Options report, and that is there is a question on whether we could best serve Congressional interests as a study participant or as an independent review of the study, design, progress, and results.

We do not believe the role assigned the Comptroller General, to provide a list of consultants, would impinge on our role as an independent reviewer. However, to set the amount needed from OPM's budget to pay commission expenses would involve our office in an administrative process. This, we believe, would be inconsistent with the concept with independence and objectivity implicit in any review of the commission's activities which we might be later be called upon to review.

Accordingly, we would urge that the reference to the Comptroller General in section 11 be deleted.

I believe that covers the main points in my written testimony and we would be glad to answer any questions that you might have.

Senator PRYOR. Thank you, Mrs. Kleeman.

We are very pleased to have Senator Trible with us this morning, a member of this Subcommittee. Senator Trible.

Senator TRIBLE. Mr. Chairman, I thank you and will not make a long statement at this time, you will be happy to know, but I want to welcome the witnesses. I do have a statement that I would like to offer on behalf of our colleague from Alaska, Senator Stevens, and ask that that be made part of the record, Mr. Chairman.

Senator PRYOR. Without objection.

Senator Sasser of Tennessee could not be here this morning and I have an opening statement for him that will follow that of Senator Stevens.

[Senators Stevens' and Sassers' statements follow:]

OPENING STATEMENT OF SENATOR STEVENS

Good morning. Mr. Chairman, in 1985 this Subcommittee held hearings on a report by the General Accounting Office on options for conducting a pay equity study of Federal pay and classification systems. Today we are to hear testimony on S. 552 introduced by Senators Cranston and Evans. I want to commend you for so expeditiously addressing this issue--an important issue which very well may be a subset of an even broader issue facing this Congress and that is classification and pay reform.

I mention that because we are constantly being told that the current classification and pay systems are outdated and that agencies are not able to compete with the private sector in recuriting and keeping high quality employees. Also, the current system, with all its best intentions—and I might mention that one was to ensure equal pay for equal work—may be outdated simply because it is so complex and internally focused. We are being urged from all sides, including our own colleagues, to do something about the problem. So in deliberating on this study we may want to think about the advisability of spending money to study only one issue, however important, in a system that is already outdated and unworkable. Conversely, this study could well be the first step to reform and update of the current systems.

Few would argue, I believe, that there is not a wage gap between men and women in the Federal Government. The proposed study would also focus on any disparities based on race and ethnic origin as well as sex. Not an easy task, no matter how skilled the experts. I think, therefore, that we need to reemphasize that the intent of the proposed study is not to prove or disprove discrimination—but to gather facts and to use the results to determine what, if any, changes are needed. Finaliy, Mr. Chairman, if the study is undertaken, I am concerned that the issue not be litigated before Congress has had full opportunity to seriously consider the findings of any study conducted.

OPENING STATEMENT OF SENATOR SASSER

Mr. Chairman, I commend you for today's hearing on S. 522, a bill calling for the first study of the Federal classification system since its inception more than sixty years ago.

The Federal classification system was initiated in 1923, and most of the assumptions underlying Federal personnel policies were installed at the same time. Some of the assumptions underlying the Federal personnel system may be outdated, and some may still be valid and useful. But we will not know until we take a long, hard look—until we study the Federal personnel system.

Moreover, there are many Federal laws and judicial rulings affecting Federal personnel; a study along the lines envisioned by S. 552 will tell us whether the Federal Establishment itself is in compliance with the spirit and the letter of these laws and decisions.

Mr. President, those witnesses who oppose the creation of a commission to study the equity of the Federal compensation system, called for in this bill, including the administration's Director of the Office of Personnel, seem to believe that a study would automatically involve implementing its requirements. However, the language of the bill is clear—the study is to be advisory only.

I commend the organizations which have submitted testimony to the hearing. Having reviewed their testimony, I believe the Senate would do well to provide for the study commission established in S. 522, and I look forward to expeditious committee action on this measure.

OPENING STATEMENT OF SENATOR TRIBLE

Senator TRIBLE. Let me say briefly, if I might, that for some time I have been concerned about many aspects of Federal pay, as you well know, and have sponsored and supported many reforms aimed at improving our programs and policies.

I am pleased that today's hearing begin the work of this Subcommittee in the 100th Congress, addressing Federal pay programs and I, of course, applaud your efforts in that regard and look forward to working with you.

Mr. Chairman, we have to, do all we can to eliminate gender, ethnic, and racial bias wherever it exists. Also, I think we have to recognize there are other factors that complicate Federal service, such as over-regulation, unnecessary complexity of Federal employment programs and policies. They all contribute to pay problems and have to be addressed by this Subcommittee and by the full Committee in appropriate fashion.

I have offered legislation to Congress that I hope you will join me in advancing, and I look forward to reviewing the testimony of witnesses today.

As is so often the case, Mr. Chairman, the Foreign Relations Committee will begin to meet at 10 o'clock for the third day of markup of the foreign assistance measure, so I will not be able to stay long, but I did want to be here and add my presence, short-lived as it might be, to underscore my commitment to the issues before this Subcommittee.

Senator PRYOR. Senator Trible, thank you. This is one of those days. I think there are about 47 committees and subcommittees meeting at this very moment. I think we are going to have start holding committee meetings at night, in order to do what we have got to do.

I might say, to our witnesses this morning, that the State of Arkansas is very fortunate because we, in our State, claim that we have three Senators from the State of Arkansas. Most States just have two. We have three. Senator Trible married a very fine young lady from our State, so we claim him as our third Senator.

Senator TRIBLE. She is, by far, my greatest asset, I would say.

Senator PRYOR. Now, the next thing we have got to do with Senator Trible is get him to move over to the right political party, and then we will have accomplished a great deal.

Senator TRIBLE. Well, I am on the right, Mr. Chairman.

Senator PRYOR. We appreciate it, Senator Trible.

Does GAO have the capability to do a study evaluating pay equity such as S. 552 is proposing? Does GAO have that capability?

Mrs. KLEEMAN. We certainly do not currently. We could do it. We would probably require some of the technical expertise that we recommend that the commission that is proposed in 552 create. We have expertise, Dr. Copeland and Ms. Gibson are very knowledgable, but it is a mammoth study that is required.

Certainly, it would require help beyond what we have right now, but we could consider it if the Congress so wished.

Senator PRYOR. The three of you look very intelligent and know about this very esoteric subject. Do you ever get tempted to form a consulting firm and go out and try to get this $1.5 million or $2 million contract?

Mrs. KLEEMAN. I think we are pretty happy with the work that we are doing. We also have done previous work for you on consultants, so I know exactly how you feel about them.

Senator PRYOR. I am a big supporter of GAO, and I want you to know that. What about the conflicting facts that OPM has found with the GAO study? We have a real conflict here.

Mrs. KLEEMAN. We depended upon them for our data and we have the most recent published data

Mr. COPELAND. The most recent Federal work force statistics are as of October 31, 1985 and those are the data that were just published as of last fall. So they are the most recent available.

Senator PRYOR. 1985 or 1986?

Mrs. KLEEMAN. 1985.

Mr. COPELAND. They are dated as of 1985, but OPM did not published them until late 1986.

Senator PRYOR. OPM claims that they have got some red-hot information that they are basing their findings on.

Mrs. KLEEMAN. If they have, they have developed it since they have last shared it with us.

Senator PRYOR. Last night or something?

Mrs. KLEEMAN. It certainly has not been published because we have all that has been published, or it has not been shared with us.

Senator PRYOR. Have you requested this?

Mrs. KLEEMAN. Not recently.

Mr. COPELAND. We would be glad to accept it.

Mrs. KLEEMAN. We will be glad to analyze it when we do get it for you.

Senator PRYOR. I had two or three other questions, but I think they would require very lengthy answers, so I am going to submit those questions in writing.[1] Senator Trible, should you like to submit any questions in writing, of course, we will keep the record open.

Mrs. KLEEMAN. We would be happy to answer them for you.

Senator PRYOR. Any other comments from your colleagues?

[No response.]

Senator PRYOR. Then we will thank you for coming and we will call our first panel.

We will call Ms. Eileen Stein; Mr. James Peirce, accompanied by Beth Moten; Ms. Barbara Curtis; and Mr. Robert Tobias.

I was wondering who made up this audience this morning. I am beginning to realize the audience is made up of panel members.

We are very pleased to welcome this panel. Ms. Eileen Stein is the Chairperson, National Committee on Pay Equity. Mr. James Peirce is the President of the National Federation of Federal Employees and he is accompanied by Beth Moten, a legislative liaison. Barbara Curtis, Registered Nurse, is a member of the Board of Directors of the American Nurses Association. Mr. Robert Tobias is President of the National Treasury Employees Union.

We appreciate all of you being here. We would like to impose the five minute rule on your statements. Of course, your full statement will be printed and be made a part of the record. We will ask Ms. Stein to begin.

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[1] See p. 77.

TESTIMONY OF EILEEN STEIN, CHAIRPERSON, NATIONAL COMMITTEE ON PAY EQUITY;[1] AND JAMES M. PEIRCE, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES,[2] ACCOMPANIED BY BETH MOTEN, LEGISLATIVE LIAISON

Ms. STEIN. Thank you, Mr. Chairman. I am Chair of the National Committee on Pay Equity and another part of the audience is our Executive Director, Claudia Wayne, who is accompanying me.

The committee was founded in 1979 and is the only national coalition working exclusively to achieve equal pay for work of comparable value. The committee has over 300 organizational and individual members, including international labor unions and major women's and civil rights groups, as well as legal associations and educational and grass roots groups.

By virtue of the unanimous vote of the 29 organizations on our board of directors, the National Committee on Pay Equity endorses S. 552, the Federal Employee Compensation Equity Act of 1987.

This is legislation that will be supported by anyone who believes in fair, non-discriminatory compensation for women and minorities in the Federal service.

There is no need for debate as to whether the Federal government should adopt comparable worth as a basis for paying its workers. In fact, Federal employment compensation is already based on the theory of comparable worth. The U.S. Code requires that all positions classified under the General Schedule be divided into 18 grades according to their level of difficulty and responsibility, and the qualifications required to perform them. Wages are set accordingly.

Thus, GS–9 nurses are paid the same as GS–9 statisticians, auditors, or medical technicians, even though the work they do is very different, because it has been assessed as being of comparable worth.

In other words, work of comparable worth will be paid equally under Title 5. So arguments that comparable worth is bad social engineering are misplaced here. That issue was already decided back in 1923.

This bill, in essence, calls for a diagnostic test and is designed to determine whether the stated purpose of the section of the code that I just referred to is being achieved or whether occupations in which women and minorities are concentrated have been undervalued. It is well known that there is a significant wage gap between the earnings of men and women employed on a full time basis.

S. 552 would provide for analyses to determine whether the differences in pay between predominantly male or white positions and predominantly female or minority positions can be explained by differences in their job content or by other job related factors.

To the extent that differences in compensation cannot be explained by any job related factors, it is not unreasonable to assume that they are the result of unlawful discrimination. We are not Martians, ignorant of our history and its effects on our institutions. We know certain things about our history. We know that the Fed-

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[1] See p. 80 for Ms. Stein's prepared statement.
[2] See p. 88 for Mr. Peirce's prepared statement.

eral compensation system was established in 1923, at a time when a societal consensus existed, that wives and mothers should not work outside the home and that the destiny of women was to be wives and mothers.

It was therefore assumed that women would be employed only temporarily, if at all, and that they need not be paid on the same basis as men. It would be very surprising if these assumptions did not result in depressed wages for traditionally female occupations which persist into the present. Given our unfortunate history of racial discrimination in employment, it may well have had the same effect on predominantly minority jobs.

But as you noted, Mr. Chairman, S. 552 makes no assumptions about the existence of discrimination in Federal compensation, nor does it mandate that any discrepancies be corrected. If a remedy is found to be needed, after this study is carried out, NCPE does feel strongly that it should result in the raising of the pay of those who have been discriminated against, rather than the penalizing of those who have not been discriminated against. But that is a question that can be left for another day.

The modest scope of this bill ought to earn it unanimous support. Those who believe that the lower salaries of women and minorities can be explained by job related factors ought to welcome this study, by which their theory, if true, would be vindicated. The fact that they instead oppose the bill indicates fear that a comprehensive study would, in fact, discredit their arguments.

Whatever the outcome of the investigation, the fundamental fairness that our government owes to its citizens dictates that it be made. In fact, the Federal government has lagged behind many States and local governments in addressing this issue. Twenty-eight States are now conducting or have already conducted studies similar to the one mandated by S. 552. Seventeen States have gone further and have already begun to make pay equity adjustments in the compensation paid to their employees. Numerous cities and counties have done the same.

There is every reason to believe that these activities at the state and local level reflect broad grass roots concern about fairness and non-discrimination in compensation. More than 2 years ago, at a time when only four States had begun to implement pay equity, NCPE commissioned a national poll to assess public opinion on the subject. The survey was based on random telephone calls to more than 1,000 working Americans, including equal numbers of men and women.

The results showed that 69 percent of U.S. workers think women are not paid as fairly as men for the work they do, and the reason they most frequently cited for this disparity was sex discrimination. In unprompted responses, both men and women most frequently pointed to discrimination as the primary cause of the wage gap, and 83 percent of those polled said they believe the wage gap is a serious problem that we should correct.

There is no reason to think that this level of concern has diminished since then. On the contrary, the greatly increased success of the pay equity movement around the country since that time suggests that it is growing.

Mr. Chairman, since you requested we summarize our testimony, I will stop at this point, but I would like to note that NCPE is particularly pleased to note that S. 552 would mandate attention to disparities based on race and ethnic origin as well as sex. That aspect of pay equity has not received the attention it deserves in the past, we feel, and it is another reason why we support S. 552.

Senator PRYOR. Thank you, Ms. Stein.

Senator Trible, I believe our best procedure might be to allow each of the four witnesses to read their statement and then we will ask any questions we have for them. Is that fine?

Senator TRIBLE. Fine, Mr. Chairman.

Senator PRYOR. Mr. James Peirce.

Mr. PEIRCE. Thank you, Mr. Chairman.

I appreciate this opportunity to appear before the Subcommittee to discuss the pay equity issue in general, and S. 552, the Federal Employees Compensation Equity Act of 1987, in particular.

The National Federation of Federal Employees co-chairs both the Legislative and Litigation Task Forces of the National Committee on Pay Equity and sits on the board of directors. NFFE has long recognized the inherent right of Federal employees to receive equal pay for work of comparable value, and we will continue to strive toward the enactment of S. 552 and the implementation of equitable pay in the Federal government.

We commend Senators Evans and Cranston for their leadership in raising the issue, and we look forward to working with the Subcommittee to ensure passage of the legislation.

The battle to bring fair pay practices to the Federal work force has been a long one. Five years ago, we called for a thorough review of the pay disparities encountered by Federally employed women and minorities and we have continued our efforts since then.

The General Accounting Office study commissioned by Congress and published March 1, 1985 clearly established that a quantifiable problem of wage inequity exists in the Federal government. No longer can it be denied that Federally employed women have been and continue to be concentrated in the lower pay grades.

The study pointed out that, despite the almost equal distribution of male and female workers in the total work force, women are paid $11,365 less than their male counterparts. Salaries are even lower for black and hispanic women. Furthermore, women are concentrated in a small number of low paying occupations at lower grade levels. Within the General Schedule series, the majority of women fall in grades one through six while most men tend to hold jobs in grades nine through fifteen.

This trend is paralleled among our membership. Most women in NFFE are employed in traditionally female positions such as clerk-typist, secretary, librarian, teacher, and nurse. These women are also more likely then men to fall into lower graded positions.

Frankly, none of these women is paid in accordance with the skills, complexity and demands required by her job. The concept of pay equity or comparable worth was developed to do just that. The goal of pay equity would ensure that equal salaries are paid to jobs requiring comparable skill, effort, and responsibility.

More specifically, pay equity advocates a bias free evaluation system that uses objective criteria to assess any given occupation.

Although the Federal government has tried in the past to update its evaluation system, it has failed to make the necessary reforms to correct wage discrimination. In 1975, a new Factor Evaluation System was designed to replace the old narrative system. The new plan is based on nine factors. Each is assigned a specific range of points. The factors are subdivided into levels which determine the total points a job may receive based upon the position description. When the points are tallied, they are matched to a conversion table that determines the grade, based on the total number of points.

The Office of Personnel Management claims that the FES is a bias-free, quantitative evaluations system even though it has continually failed to assess objectively the value of worth of most female-dominated jobs. The current system still relies on outmoded value judgments and standards.

Because the standards used are not continuously revised, they frequently fail to account for the ability needed to use the developing technological resources essential in many professions, for example data processing knowledge and word processing skills. The factors applied to job descriptions also tend to be weighted against or fail to account for traditionally female skills because they do not recognize the value of such skills.

A thorough review of the wage setting system, to identify discriminatory practices is essential. If the Federal government is to successfully eliminate sex and race-biased job evaluations, these biases must first be identified and measured. S. 552 takes the first step by proposing two methods of analyzing wage disparities: through economic analysis and through a job content study.

The economic analysis provided by the bill isolates variables that influence wage-setting and determines how they can affect wage discrepancies. Such a study would consider not only the "human capital," that is, the employee's characteristics, but also the job requirements and the environment in which the work is performed. While valuable information could be provided through such an empirical analysis, the pay equity study would not be complete.

Therefore, a study to measure the actual worth of a job is necessary to round out any survey. The legislation's job content analysis would do just that. This approach considers the characteristics of an employee's position and places a value on the job he or she performs. The FES system is an example of a job evaluation system; however, it is an example of how not to conduct this type of analysis.

Senator PRYOR. Mr. Peirce, are you about through with your statement?

Mr. PEIRCE. Yes.

Senator PRYOR. Thank you.

Mr. PEIRCE. As the largest employer in the nation, the Federal government has an obligation to erase all vestiges of discrimination against women and minorities. Already, 46 States and several corporations have taken action to address the issue of pay equity. Therefore, it is simply no reason for Congress to delay the study of the Federal pay system any longer.

We commend the Subcommittee for its attention to the issue and we look forward to working with you to ensure passage.

Thank you, Mr. Chairman, and that concludes my statement.

Senator PRYOR. Thank you, Mr. Peirce. I did not mean to rush you, but Senator Cranston, who, of course, is one of the chief co-authors of S. 552, has just arrived this morning and we are very indebted for his giving us this time.

Senator Evans has previously made his statement, Senator Cranston, and now we would like to hear your statement.

TESTIMONY OF HON. ALAN CRANSTON, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator CRANSTON. Thank you very much, Mr. Chairman.

I appreciate your giving me the opportunity to testify at this moment, and I appreciate the panel members understanding of my own time constraints.

I am delighted to be here today to testify in support of S. 552, the proposed Federal Employee Compensation Equity Act of 1987, which Senator Evans and I introduced on February 19.

I deeply appreciate your swift action, Mr. Chairman, in scheduling this hearing today. It has been a long time coming.

S. 552 is a bipartisan measure which would provide for a long overdue study of the classification, grading, and pay-setting practices of the Federal government to determine whether the wages paid in positions in which women or minorities are disproportionately represented are lower than the responsibilities, duties, difficulty or qualification requirements of the work performed.

The legislation closely follows the suggestions on how such a study should be conducted which were contained in the report "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems" submitted by the General Accounting Office on March 1, 1985.

Two years ago, this Subcommittee held four days of hearings on that GAO report. All of the issues surrounding the need for this type of study and the various approaches for conducting the study were thoroughly aired during those lengthy hearings.

There is no dispute, no dispute at all, over the fact that a gap exists between the average wages earned by men and women who work for the Federal government. Women employed by the Federal government earn only about 63 percent of the average earnings of males employed by the Federal government.

There should be no dispute over the need to find out the reason for these disparities. The current classification and wage setting system used by the Federal government is based upon the system developed in 1923. The world of work and the role of women in the work force in particular has dramatically changed in the last 60 years. It makes common sense to take a new look at the system to see whether it is marred by biases of a bygone era.

Our legislation is designed to do that. Senator Evans and I have worked closely with GAO to make sure that the scope of the study and the methodologies utilized will provide a fair and equitable analysis of the Federal wage setting process. We have made numer-

ous changes in the bill to accommodate various concerns about the impact of undertaking such a study.

The legislation provides for both a job content and an economic analysis approach in the mandated study. As GAO stated in the 1985 report, "Use of both approaches can provide a clearer understanding of how Federal wages are set and would be less susceptible to charges that important explanatory variables have been ignored."

Mr. Chairman, the study proposed in this legislation is similar to studies which have been undertaken in numerous state and local jurisdictions. It is carefully designed to take into account all of the possible reasons for the existence of the wage gap so that we can then make intelligent and reasoned decisions about what problems can and should be addressed.

Almost one-third of the Senate has joined already in co-sponsoring S. 552. Twice, the House of Representatives has passed legislation to provide for this sort of a study. It is well past time for the Federal government to assume its responsibility to serve as a model employer by assuring that women and minorities are fairly compensated for their contributions in the Federal work force. Undertaking the study provided for in S. 552 is a small but meaningful step in the right direction.

I look forward to working with you, Mr. Chairman, and with Senator Trible and the other members of the Committee and all other Senators who become interested, so that this measure can be passed by the Senate at the earliest possible time.

Thank you very much.

Senator PRYOR. Senator Cranston, we thank you for your leadership in this area and for focusing your time and attention on this very timely subject. I have never seen a study that we were thinking about conducting become so controversial, but it is very controversial, and we are hearing witnesses on both sides this morning.

We are giving both groups an opportunity to express themselves. That is the way the system works best. We very much appreciate your bringing this matter to the attention of the Senate in your testimony this morning.

Senator CRANSTON. Thank you, very much.

Senator PRYOR. Feel free to sit with us in questioning our witnesses.

Senator CRANSTON. Thank you, I wish I could, but I cannot.

Senator PRYOR. Fine, we understand.

Barbara Curtis, registered nurse, Board of Directors, the American Nurses' Association.

TESTIMONY OF BARBARA CURTIS,[1] R.N. BOARD OF DIRECTORS, AMERICAN NURSES ASSOCIATION: AND ROBERT M. TOBIAS,[2] PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Ms. CURTIS. Chairman Pryor, members of the Committee, on behalf of the American Nurses' Association and the Association of

[1] See p. 98 for Ms. Curtis' prepared statement.
[2] See p. 111 for Ms. Tobias' prepared statement.

Critical Care Nurses and the Association of Operating Room Nurses, I appreciate the opportunity to talk about what we consider to be a very important piece of legislation, S. 552.

The American Nurses' Association is the largest nursing organization in the country, representing 200,000 professional nurses in the United States. And it has been for more than 50 years that ANA has fought to secure the salaries for the profession that adequately reflect the value of work performed by nurses. The association supports economic equality for all, and is working to make pay equity for women and minorities a national priority.

ANA has been a member of the National Committee on Pay Equity almost since its inception, and we are currently a member of the board of directors and co-chair of the legislative task force. We think of the term pay equity as a shorthand for a fair and equitable wage and consider this a basic economic necessity.

Economically, registered nurses have been undervalued as a profession. Our work primarily, that has been performed by women, has received lower pay. And nursing is often cited as the stereotypical female dominated profession because it is 97 percent female and it is routinely thought of as a helping, womanly profession.

As the foundations of modern nursing were formed a pattern of low wages were created. Despite increased sophistication and work requirements, that economic legacy remains with us. Nurses' salaries are substantially less than those of male dominated professions.

Despite physically demanding work, rotating shifts, exposure to infectious diseases and exposure to dangerous substances, the average salary of an R.N. was only $21,000 in 1984. Because nursing as a profession suffers from what is called salary compression, after many years in the profession nurses can expect to earn only $10,000 more despite a vast amount of experience.

Salaries for nurses do not compare favorably with similar male dominated professions. In fact, current wages for registered nurses compare unfavorably with the earnings of male dominated trade groups, such as carpenters, printers, bus drivers and police officers, despite the fact that educational requirements for nurses, and in some cases the physical risks and stress are considerably higher.

But the problems of American nurses are not unique. The overall economic position of American women who work outside of the home remains as unfavorable as it was before the passage of the Equal Pay Act and the Civil Rights Act some 20 years ago. Women are overwhelmingly concentrated in traditional women jobs in clerical and service occupations. Greater percentages of women in an occupation generally means lower pay.

What is happening to nurses in the Federal government mirrors what is happening in the private sector. Last August the Washington Post carried an article about the closing of beds at the National Institutes of Health because of NIH's inability to recruit and retain qualified nurses. A major reason for this shortage was salaries below the market value.

Beginning nurses who are hired as GS–7, the same grade as an experienced correction officer or a high level secretary, receive $18,000, while the rate in the region is $23,000 to $24,000. Nurses with advanced degrees, classified as GS–9s, the same category as

junior contract officers or experienced customs inspectors, are hired at $31,000; $4,000 to $6500 below the market.

For a profession where wages are already depressed, this is a crisis. At the same time, NIH is spending $10,000 to recruit, hire, and orient each new nurse.

Now as of the middle of this month, NIH received permission to pay special pay rates to nurses in the clinical specialties. This, however, is a band-aid approach, when they are earning considerably less than nurses in the private sector, and far less than men earn with comparable education, training and responsibility.

And this same problem is exacerbated in Indian Health Service. Nurses working for IHS are in the GS-4, 5, 7 and 9 grade levels. The vacancy rate at IHS has been about 17 percent; the turnover rate is 39 percent. Computations show that the replacement cost for nursing staff who have quit is almost $2 million per year.

It would be possible to conclude that all the Federal government needs to do is to raise the wages of nurses working within the system. This is simply not true. These numbers are but one part of a much larger picture of the systematic devaluation of women's and minority wages in the Federal government's job and wage classification system.

We have talked about nurses because that is what we know best. But we are supporting this bill, S. 552 because, although we think we know why nurses wages are so low and other female dominated professions are undervalued by the Federal government, the study called for in this bill would provide some answers.

Standards of good management call for a study. This is, indeed, just a study. It does not commit the Congress or the government to any future actions, so it is amazing to me it can be so controversial. We are simply asking you today for a very small, easily achievable and rational step which we believe is long overdue.

We thank you for this opportunity to present this.

Senator PRYOR. Ms. Curtis, we appreciate very much your being here today and we thank you for your testimony.

At this time we will call on Mr. Robert Tobias, President of the National Treasury Employees Union. Mr. Tobias.

Mr. TOBIAS. Mr. Chairman, we very much appreciate being here and testifying on this piece of legislation. I, like you, find it difficult to understand the controversy over this bill, and particularly Ms. Horner's objections as she testified earlier this morning to this legislation.

The principle of pay equity simply requires that pay reflect the worth of a job to the employer. It is hardly a radical and dangerous doctrine, or one that is unknown to this government.

Within the Federal government, the position classification system has used a job evaluation procedure for decades, based on the premise that the duties and responsibilities of a job should determine pay levels. In the Federal classification scheme each position is evaluated using criteria such as skill, knowledge required, and working conditions, and quantitative measures are used to determine the value and corresponding pay of the position. Those are the factors which go into differentiating grade 1 to grade 18.

However, the Federal classification system is fundamentally flawed because the factor evaluation system used to assign weights

to various job tasks is based on classification standards that have been in existence for 64 years. Consequently, the system reflects much of the bias concerning female and minority job roles that permeated society 64 years ago.

In 1923, the year the Federal job classification system was established, Warren G. Harding was President. Women had won the right to vote only a few years earlier. Racial segregation and discrimination were openly and prevalently practiced around the country. Federal jobs were advertised under the banners of Help Wanted-Male or Help Wanted-Female and women were officially barred from certain jobs altogether.

It is certainly not hard to imagine under these circumstances how value would have been determined by the Federal government, how worth would have been considered by those who were creating a classification system.

It is my hypothesis that this definition of value got into the structure in 1923 and has never been eradicated. Now there is some evidence to support the hypothesis, particularly the GAO finding that women earn only 63 cents of each dollar earned by a man in the Federal government, and earn an average salary of $18,810 compared to $27,720. And black and Hispanic women have averaged even less.

But the fact is that my hypothesis could be just as good or as bad as anyone else's and what is needed is the study that this bill would mandate to find out whether my hypothesis is correct or whether Ms. Horner's hypothesis is correct. It is now time that we examine the Federal pay system, discover whether there is any bias, expose that bias if it exists, and eliminate the race and sex discrimination that, I believe, is present inherently in the system.

The legislation which is the topic of today's hearing authorizes that study to determine whether sex, race or ethnicity are factors in determining Federal pay rates. I would like to highlight the features of this legislation which we think are very important.

First, it requires that the pay study include both a job content analysis and an economic analysis. We agree that both of these methods should be incorporated in the study to ensure that the results are as objective as possible.

Second, the bill creates a bipartisan commission composed of representatives of the President, the Congress, and Federal employee unions which will guide the study and make recommendations to Congress based on the study's results. Ms. Horner seems to think that the three out of nine people who represent unions would somehow overpower the other Commission members. I think that is a little outrageous, on the composition of the committee issue.

But even on the substantive issue, I thought Ms. Horner's testimony was quite thin because on page six she says that the key to women's advancements are equal pay for equal work, prohibition of intentional pay discrimination, absence of occupational barriers to entry and promotion, encouragement of occupational mobility, and emphasis on performance rather than seniority. Well, all of that is true, and no one would dispute that.

But all of her testimony fails to deal with the issue of what happened in 1923 when this system was first established and whether or not we create a study to examine whether the law is being en-

forced as it was written by the Congress of the United States. There is not one word in any of her testimony that deals with that very fundamental issue that this Congress is considering in this legislation.

Third, the study will include an analysis of occupations in which disproportionate members of a race or ethnic group are employed, as well as occupation in which either sex predominates. Although pay equity studies have focused primarily on wage differences between men and women, such studies are beginning to look at racial and ethnic discrimination as well.

We are pleased, Mr. Chairman, that this Congress is taking the initiative in achieving pay equity in the Federal government, and we commend you particularly for conducting hearings on this vital issue. We believe the Federal government should be in the forefront of the struggle to end wage discrimination against women and minorities.

And we believe that this study is the perfect solution for those who feel that this discrimination is inherent in the system, and those who feel that it is not, because without the evidence we are going to have the feeling, and the resentment, and the anger and the frustration. And so in order to put that all to rest it seems to me that this Congress as a manager of the Federal work force needs to have the information on which to base decisions to manage the Federal work force.

So we appreciate your holding hearings on this bill, Mr. Chairman, and we hope that the Subcommittee and the Committee and the Senate will join with the House in passing this most important piece of legislation.

Senator PRYOR. Mr. Tobias, thank you very much. We appreciate your statement. Your full statement will be printed in the record.

Let me ask you one question. In fact, I think I will ask one question for each of our panelists this morning.

In your statement you discussed the benefits that collective bargaining has brought about in the women's salaries in the Postal Service, as I recall. Now I wonder if this portion of the pay gap that you believe is attributable to discrimination has been eliminated to your satisfaction.

Mr. TOBIAS. In the Postal Service?

Senator PRYOR. Yes.

Mr. TOBIAS. Well, they have a shot at fixing it in a much better way than we do in representing general schedule and Federal wage system employees because they bargain not only on pay but on classification systems as well, and so they can deal with the issue of correcting those problems.

And the other thing that makes it easier for the Postal Service is that it is generally a more homogeneous work force. There is not the number of different job classifications in the Postal Service that we see in the general Federal government work force.

So I was interested in those numbers that show the predominantly black, the predominantly white, the predominantly women, the predominantly men. I believe, although I do not have the statistics in front of me, that very few of those kinds of situations would occur in the Postal Service. And I think it has been corrected in part because of the ability to bargain collectively.

Senator PRYOR. Should the Postal Service be our model? Have they reached the point at this stage to be a model?

Mr. TOBIAS. Well, I do not think the Postal Service is a model. I think they have some interesting—they have done some interesting things in correcting a problem without the advantage of a study. I think that because we do not have bargaining for general schedule employees that the first step has to be a mandated study.

Senator PRYOR. I deeply appreciate your appearance this morning.

Mr. Peirce, I wonder, can you say today—you may not want to say—which might be the best and the worst departments in discrimination?

Mr. PEIRCE. You are truly trying to put me on the spot, are you not?

Senator PRYOR. I think it is the Washingtonian that about every three months has the best and the worst restaurants. What is the best and the worst in the area of discrimination in our Federal system? Would you like to divulge that at this time, or would you rather not?

Mr. PEIRCE. I do not know really that I could draw a distinction because I think—for this reason. First off, we are talking about pay equity. We are not talking, in other words, about pay comparability. We are talking about discrimination.

We are also talking—the discrimination starts with the classification standards, and all of the agencies use the same standards. That is our basic problem.

The philosophy, the methodology, the technology related to careers back in 1923 has totally changed yet the standards have not changed. By the same token, we have already addressed the fact that women were looked at in a particular way back in those days, and I think this was built in.

The only way we are going to correct not only the problem, which is a discrimination problem with pay equity, as well as pay comparability, is to study the standards. We must do something about the standards because they are also the crux of the problem with comparability pay. Any way we go, it is right there.

Senator PRYOR. Mrs. Horner testified earlier this morning, Mr. Peirce, that she is very concerned, I guess expressing the viewpoint of OPM, that it seems like she says there is a stacked deck here. She believes that if we appoint to this commission the representatives of the three major unions they are going to choose a firm to do a study which is going to be biased before it is ever published or ever completed.

Do you agree with this?

Mr. PEIRCE. Mr. Chairman, that is pure nonsense. We would lose our credibility if we chose a firm that was known to be biased in one direction or the other. The study would literally have no credibility when it came out.

Senator PRYOR. I thank you, Mr. Peirce. By the way, I just want to tell everyone today, it is ironic that this hearing would be on this day. This is National Secretary's Day. I have just been informed of that. I have got to go get something for my secretary.

Now, Ms. Stein, if I might ask you one question. Some of the opponents claim that this study that we are talking about, embodied

in S. 552, is going to talk about an unexplained wage gap which will be automatically attributed to discrimination without taking other possibilities into consideration.

What is your opinion of that argument by the opponents?

Ms. STEIN. Well, Mr. Chairman, I think that is not true. Certainly the legislation as such does not say that any unexplained gap will be considered due to discrimination. But one of the good things about the study as it is proposed is that it looks at just about every job related factor that could be considered to legitimately affect pay. It looks at the job content factors of skill, effort, responsibility and working conditions. And it looks at the human capital factors of education, prior experience and so forth.

And if we cannot find that differences in pay are explained by any conceivable legitimate job related factor, I think—as I think my testimony made clear—that it is reasonable to infer that discrimination is the cause. But of course, that decision would be left up to the Senate and the House of Representatives who would be receiving the results of this study and the recommendations of the commission and then would make their own decision about what the study showed.

Senator PRYOR. I want to thank you for your testimony.

Ms. Curtis, I do not believe I have a question for you, but we may have other questions by members of the Committee or the Subcommittee that we will put in writing in the next several days to you.

We are very grateful to all of you for appearing. We appreciate your testimony. Thank you.

We will now call our final panel: Ms. Bobbi Thompson, Ms. Susan Vergeront, Mr. Lawrence Z. Lorber.

Did I pronounce your name correctly?

Ms. VERGERONT. You certainly did.

Senator PRYOR. Thank you. Ms. Bobbi Thompson is President of Aviation Sales, representing the U.S. Chamber of Commerce today; is that correct?

Ms. THOMPSON. That is correct, sir.

Senator PRYOR. You sell airplanes?

Ms. THOMPSON. Yes, sir, I do.

Senator PRYOR. Where are you from?

Ms. THOMPSON. Miamisburg is just south of Dayton, Ohio about 10 miles.

Senator PRYOR. I see.

Ms. THOMPSON. The birthplace of aviation.

Senator PRYOR. How long have you been selling airplanes?

Ms. THOMPSON. For about 20 years.

Senator PRYOR. I assume you fly them also.

Ms. THOMPSON. I have been known to do that.

Senator PRYOR. Thank you. We appreciate your statement this morning and your appearance, Ms. Thompson.

TESTIMONY OF BOBBI THOMPSON, PRESIDENT, AVIATION SALES, FOR THE U.S. CHAMBER OF COMMERCE;[1] SUSAN VERGERONT, WISCONSIN STATE ASSEMBLY, FOR THE NATIONAL ASSOCIATION OF MANUFACTURERS;[2] AND LAWRENCE Z. LORBER, OF BREED, ABBOT & MORGAN, FOR THE AMERICAN SOCIETY FOR PERSONNEL ADMINISTRATION[3]

Ms. THOMPSON. Mr. Chairman, I appreciate the opportunity to speak here today. As you said, my name is Bobbi Thompson, and I would like to tell you just a little bit about myself before I get into my statement here. And the reason I would like to do that is probably——

Senator PRYOR. Let me just say this to our panel. I am probably in about 15, and no more than 20 minutes, I will have to leave to go to the Finance Committee. We are beginning the markup on the trade bill this morning.

Ms. THOMPSON. I will be brief.

Senator PRYOR. So in no more than 20 minutes I will evaporate and you will be speaking to an empty panel up here. Thank you.

Ms. THOMPSON. Well, the reason I wanted to say a few things about myself is probably one of the reasons that I am an opponent for comparable worth. I am the president of Aviation Sales, a company which I do own. I am also on the board of trustees for the Dayton Area Chamber of Commerce, which is the fourth largest Chamber in the United States.

I am also on the board for the South Metro Chamber of Commerce, and honorary member of the NFIB, which is a fine organization here in Washington. And I also serve on the board for the National Air Transportation Association. This organization is 47 years old and I am the first woman to ever serve on their board.

With the Committee's permission, I will leave a prepared written statement and just offer some brief comments.

Senator PRYOR. Your full statement will be printed in the record, thank you.

Ms. THOMPSON. Equal opportunity is the law. Equal pay for equal work is the law, and non-discrimination is the law. But comparable worth is not the law. Any bill which explicitly or implicitly seeks to define or identify discrimination on the basis of comparative value on different jobs represents a significant change in the law.

It is this issue, comparable worth—and I will have to admit, I am not anywhere near clever enough to figure out the difference between comparable worth and pay equity. It is a matter of semantics that totally escapes me—it is the contention that it is a tool for measuring discrimination which has raised employer concerns about S. 552.

The bill is based squarely on the premise that a comparable worth study can uncover discrimination. This faulty premise has been rejected by each Federal appellate court which has considered it. Proponents of comparable worth often contend that the wage gap between male and female workers is solely the result of dis-

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[1] See p. 119 for Ms. Thompson's prepared statement.
[2] See p. 149 for Ms. Vergeront's prepared statement.
[3] See p. 161 for Mr. Lorber's prepared statement.

crimination. Other non-discriminatory factors for the wage gap are listed on page 16 of my written statement.

But then even taking these non-discriminatory factors into account, explanation for the remainder of any wage gaps seldom can be found. For example, a wage gap exists between men working in large firms and men working in small firms. Just because we cannot explain this gap does not mean that the cause of this gap is discrimination.

A further example can be seen in the Illinois study that examined 24 different jobs. One job analyzed was the predominantly male job of electrician, which received 548 points and was being paid more than the predominantly male job of accountant which received 889 points. Yet, for no explainable reason, the State paid electricians more. Certainly that did not evidence sex discrimination.

S. 552 should be rejected for the following reasons. It is more than just a study. It would implicitly define discrimination in a radical new way and is likely to result in any residual unexplained wage gap being seen as evidence of discrimination. The only permissible recommendations for achieving pay equity are wage increases. It would be conducted by a commission likely to place greater value on white collar jobs than blue collar.

The bill wrongly defines job evaluations as objective, should be conducted with two or three consultants operating independently. It would be granting the comparable worth theory official congressional approval. It is likely to trigger expensive litigation for the government and taxpayers. It would cost taxpayers some $6.6 billion, and unless I missed something in the news this morning, we are already severely in debt.

This bill would erode personal initiative, which scares me the most about it. That was some of the reason that I made those statements beforehand. If I had had a crutch of someone saying, if you just enter a job field, we will put a number on it and that is what you will make I would not have had initiative to go out and strive to do something better than that. You can make a person crippled by telling them, we will take care of you all the time, do not worry about standing on your own two feet. Let us not do that to private enterprise.

In Wisconsin the pay equity task force presided over a system which assessed 283 state jobs based on 12 factors, including knowledge required, effective actions, stress, hazard and amount of discretion. On the surface each of these factors may seem like a reasonable means to assess the value of each state job.

In fact, the entry level secretarial position in state government received the same score as an aircraft pilot for all the following factors: job complexity, knowledge required, judgment, amount of discretion and effective actions. I would like to find out who did that study, get them with my insurance company and see if I can get my rates lowered on that account.

Opposition to comparable worth or pay equity studies are not just from Republicans or from business. Coleman Young, the mayor of Detroit has said, "Any time a city gets hung up on an abstract study that makes arbitrary comparisons of jobs but does not take into account the impact of society and its ability to pay, that is

dealing in potential anarchy and inviting bankruptcy and the collapse of local governments. If a painter makes more than a secretary, let more women be painters."

New York mayor Ed Koch also opposes comparable worth.

The solution to occupational clustering of women does not lie in forcing employers to pay higher wages for what has traditionally been called women's work. To identify wage gaps between different jobs does not mean that we have identified discrimination. In the words of Carl Sagan, "Just because we cannot identify a light, does not make it a spaceship."

The goal of equal employment opportunities should be to create job mobility for women, giving women access to all jobs, including the highest paying, traditionally male jobs and allowing the concept of a man's job and woman's job to continue to wither away. Comparable worth would do precisely the opposite. It would perpetuate sex-segregated jobs.

The Chamber urges Congress and this Subcommittee to reject the comparable worth concept and S. 552, particularly when cloaked as a mere study to determine equity. If Congress wishes to identify discrimination within the Federal system, we highly recommend that you modify this study to reflect existing civil law.

Thank you, sir.

Senator PRYOR. Thank you very much, Ms. Thompson, for your statement.

And now, the Honorable Susan Vergeront. You are a member of the Wisconsin State Assembly; is that correct?

Ms. VERGERONT. That is correct.

Senator PRYOR. How long have you been a member of the State Assembly?

Ms. VERGERONT. I am in my second term.

Senator PRYOR. In your second term.

Ms. VERGERONT. That is right.

Senator PRYOR. Today you are representing the National Association of Manufacturers.

Ms. VERGERONT. That is correct.

Senator PRYOR. We appreciate you being here. You have traveled a long way. We look forward to your statement.

Ms. VERGERONT. Thank you, Mr. Chairman. I do appreciate the opportunity to appear here this morning. As you said, my name is Susan Vergeront, and I am the elected representative to the Wisconsin State Assembly from the 60th assembly district and a member of the Wisconsin Women's Council.

I am appearing here today on behalf of the National Association of Manufacturers, an association of more 13,500 corporations of every size and industrial classification located in every state in the nation. I am here today because I am very familiar with Wisconsin's experience in studying and implementing comparable worth pay adjustments. It is our hope that the outcome of Wisconsin's effort could be helpful to you in your deliberations on S. 552.

In the interest of time I will limit my remarks, but would request that my full testimony be entered into the record.

Senator PRYOR. Without objection.

Ms. VERGERONT. The National Association of Manufacturers has been a strong advocate of civil rights in the business community

and has strongly supported affirmative action. It is my belief on pay equity and equal pay for equal work is in complement with that of NAM. I believe that discrimination in the workplace should be identified and all legal mechanisms available to us should be used to eliminate it.

Neither I nor NAM would support gender-based discrimination in the job market. If that were the issue there would be no debate today. However, I have found in Wisconsin and across the United States, the proponents of comparable worth seem to want to utilize and implement this evaluation process without taking a look at whether it is a legitimate tool to determine gender-based pay discrimination.

While proponents of comparable worth assume that all jobs have an intrinsic economic value or worth and that that value can be measured, there simply is no evidence to support that argument. First of all, economic value cannot be intrinsic in a free enterprise system. Economic value is determined by negotiations between those willing to sell goods or services and those willing to buy.

Secondly, as confirmed by the National Academy of Sciences, all job evaluation systems are highly subjective, requiring their designers to select factors to evaluate and then assign weights to produce quantitative scoring for all jobs contained in a specific work force. Using this process, there is no possible way to avoid building in designer bias.

Although this technique borrows from the job evaluation system commonly used in the private sector, comparable worth advocates employ the system in a far different way and ignore some important components and systems of checks and balances used in the traditional job evaluation techniques.

For example, in using the traditional job evaluation process the employer's objective is to align wages for a particular job with the wages for other jobs of similar characteristics, such as evaluating office workers as apart from evaluating production workers. The comparable worth process throws all jobs together to factor out gender or race as a bias in pay.

The traditional job evaluation process incorporates budgeting, planning and evaluation activities as a part of the process. The comparable worth process, at least in Wisconsin, did not do this.

The problems and anomalies of the comparable worth process can be dramatically demonstrated by the initial outcomes of the Wisconsin implementation in which, one, the comparable worth process evaluated supervisors to be worth less than their employees in nearly 10 percent of the jobs evaluated.

Two, new pay inequities were created as some jobs with the same worth points got reassigned to higher pay while others did not.

Three, the costs in Wisconsin were 13 percent over budget, and that was after the first phase. We still have two more phases to implement.

A closer look at the job evaluation process will graphically depict the subjectivity of the comparable worth system. For instance, when comparing the outcomes of factor scoring, in Wisconsin a number of questionable and even silly results were found as was mentioned in earlier testimony.

For example, for the factor of surroundings, factor scores showed dental assistants to work in better surroundings than dentists. For the factor of consequence of error, it was determined that the consequence of error was greater for a baker and greater for a typist than for an airline pilot.

And it is not just the Wisconsin experience that shows the comparable worth process to be a faulty process. When job worth points were compared between five common jobs in four states including Wisconsin, inconsistencies were found in the value of jobs between states as well as within each state.

The costs of comparable worth. If it could be shown that comparable worth would eliminate all or even most inequities within public sector pay, I am sure most taxpayers would not mind the extra costs. But the simple fact is that the comparable worth method of removing gender-based pay in Wisconsin came in at a cost of $38 to a projected cost of $38 to $100 million, and it has not worked to remove inequities and has cost the taxpayer dearly.

Adding to the frustration of those who opposed this method before it was implemented is the fact that a recent survey in Wisconsin showed the public sector pay to be, on average, 18 percent higher than pay in the private sector. For those job categories that received a comparable worth pay increase in Wisconsin this pay gap widened to a whopping 41 percent.

And what did comparable worth accomplish? The first payroll with comparable worth raises showed an average biweekly increase of $31.77 for males and only $17.77 for females.

A legal false alarm. Proponents of comparable worth in Wisconsin warned the state legislature in 1983 that the legal status of the issue was such that Wisconsin had no choice but to implement a comparable worth study. That claim was not only premature, but was based solely on the *AFSCME* v. *State of Washington* case in which the courts ultimately reversed the ruling and held that the simple fact that an employer pays prevailing market wages is not, without more evidence, a basis for a claim of intentional sex discrimination.

Wisconsin did not have the benefit of this ruling prior to starting the comparable worth process. However, the Federal government does have that knowledge.

Alternatives. Comparable worth is a costly solution which does not either close the wage gap or eliminate discrimination in the work force. The ultimate solution will come from growth into a fully integrated work force and actions that will help women in career ladders.

It is necessary to work on programs to address the causes of the wage gap, such as improving educational opportunities for women, providing for flex-time and cafeteria-style benefits, improved enforcement of Title VII in the Civil Rights Act, and increasing career opportunities.

In conclusion, the implementation of salary and wage revisions on a comparable worth basis is not just a matter of housekeeping. Comparable worth is a process which is based on a very questionable assumption about the marketplace and how people behave. The primary underlying assumption of comparable worth that different jobs can be objectively evaluated for their worth to their em-

ployer has not yet been proven, and has been rejected as the sole basis for determining discrimination by the courts.

Wisconsin's experience, the experience of other states and the court decisions dictate that any proposal for a Federal study which would attempt to link wage gaps with discrimination, thus studying comparable worth, should be denied.

It is entirely proper and desirable for Congress to study the Federal classification system and discrimination should be eliminated where it exists. But it is a senseless and costly exercise to attempt to do so based on the flawed process of comparable worth evaluation.

Thank you, Mr. Chairman.

Senator PRYOR. Thank you.

Mr. Lorber is representing today the American Society for Personnel Administration. We appreciate you being here and we look forward to your statement.

Mr. LORBER. Thank you, Mr. Chairman.

The American Society for Personnel Administration, ASPA, is the world's largest professional association devoted to human resource management issues. ASPA's 36,000 members represent organizations which employ more than 40 million people.

ASPA and its members have had a vital concern with the orderly development of law in the human resource management area, and compensation has been at the forefront of its efforts in recent years.

It is with this background of long and concerned involvement with public policy issues that ASPA offers these comments on S. 552.

The study design set up by S. 552 contains a significantly flawed concept of compensation analysis and attempts to incorporate, albeit by indirection, the legally rejected theory of compensation discrimination known as comparable worth.

ASPA does not oppose a general review of the Federal compensation system. To the contrary, appropriate compensation practices suggest that periodic reviews of compensation systems to assure that they are being administered properly and reflect the employer's current business objectives are a necessary component of compensation administration.

However, the study proposed by S. 552 is a completely different type of compensation analysis and one which raises issues regarding the integrity of the study design.

Our concern with the proposed study lies in three major areas: First, the scope of this study is directed to jobs in which incumbents are of numerical predominance by race or sex. This limitation restricts the study in a way almost guaranteed to result in skewed results. If the intent of the legislation is to determine whether jobs may be undercompensated because of the race or sex of incumbents, then it is imperative that other jobs where such "preponderance" is not present be examined as well to determine if the integrity of the system is at fault rather than an aberrational result not connected to the compensation system.

The impact of this design flaw is made clear in this illustration. Assuming that the consultant determines that the pay level for a predominantly female job differs by 20 percent from the predicted

value base set forth in the legislation. The legislation would then assume a 20 percent differential based upon a prohibited factor, sex. As we heard earlier, that has been deemed to be discrimination by the proponents of this study.

However, if a non-female predominant job resulted in the same adverse differential, sex would be eliminated as a factor. Yet, it is precisely this comparison which is not called for by the terms of S. 552. In directing the study to focus only on certain jobs chosen not for their representative nature but rather for their demographic makeup, the legislation evinces an intention to achieve a predetermined result.

Second, the proposed study is a classical Title VII compliance review masquerading as a compensation study. Since 1972, the Federal government's personnel system has operated under the strictures of equal employment law. One of the principal objectives of the law is to insure that employment decisions, including those involving compensation, are reached without unfair or invidious burdens based on the race or sex of employees or job applicants.

One of the major hallmarks of equal employment law is that the means of determining the desirability of jobs, and the measure of exclusion from such jobs, is almost always based on the compensation levels for such jobs. In other words, the equal employment posture of an employer is often determined by the percentage of minorities or females in the better paying jobs.

The proposed study would turn that concept on its head. Rather than determining whether there is insufficient job mobility for certain group members, the proposed study incorporates the hypothesis that they should stay where they are but only get paid more.

This is a wholly inappropriate statement of public policy and mischaracterization of accepted compensation practices.

Third, the validity of the proposed study is brought into further doubt by the requirements of Section 5(b)(2) which forbids the commission from even recommending a result which could result in a reduction of pay for any position. Thus prohibited from seeing evil, speaking evil, or hearing evil—evil being defined as overgraded jobs—the "objective job analysis" contemplated by the study is hardly objective.

The legislation would establish a feel good study in which the only parties who would not feel good would be the Federal taxpayers and those who have concerns about fair public policy. Any compensation professional, except perhaps the one chosen for this potentially lucrative project, would view such constraints as tainting the entire project.

If the price for undertaking this study is the renunciation of legitimate compensation analysis, then this study has been priced too high.

As we have heard earlier, the courts have now been uniform in rejecting the theory of comparable worth. In *Spaulding* v. *University of Washington; AFSCME* v. *State of Washington;* and most notably *American Nurses Association* v. *State of Illinois,* the concept of comparable worth has been rejected.

The courts have noted that while anybody can play with the numbers, nobody should be under any illusion that the result will achieve any degree of objectivity or scientific credibility. The vari-

ous court opinions have recognized the truth of the premise that job evaluation is an art, not a science, and that compensation systems are an inappropriate vehicle to deliver social change when their task is to deliver a fairly compensated and productive work force.

ASPA welcomes any effort to revitalize the Federal compensation system and would eagerly lend its own expertise and resources to the effort. However, S. 552 does not achieve this goal. Rather, it is a thinly veiled effort to resurrect the discredited notion of comparable worth and sets up a seriously flawed study whose requirements and design are inappropriate.

We therefore strongly urge this Committee to reject this bill. While it is probably the right time to undertake a legitimate review of the Federal compensation system, S. 552 does not achieve that result.

Thank you.

Senator PRYOR. Thank you, Mr. Lorber.

I have one quick question that I am going to ask all of you. Here we are elected by the people that we represent in our respective states and Congressional districts, et cetera. There appears to be a problem out there somewhere, at least according to the General Accounting Office, with discrimination, with pay, based on possible racial bias, bias against female employees, et cetera. So there is a problem out there.

We, as an institution, generally react to problems. We do not act very often on our own, but we react.

Are you suggesting that we do not recognize this problem?

Mr. LORBER. Let me state briefly first, no not at all. The position should be that if there is a problem in mobility, then obviously the Congress should address it. If there is a problem in placement, then Congress should address it. If there is a problem in compensation, the Federal compensation system is flawed, then undertake a study.

But what the legislation does is predetermine a result. We are not saying do not study it. We are simply saying if you study it, do it legitimately and do not concoct a study which, as we have heard by the other speakers on this panel, inevitably is going to result in a skewed system where certain jobs are simply going to have their salaries increased.

All we are simply saying is that there may indeed be a problem, but if this is the response to that problem, this response will lead you probably into further problems and not answer any legitimate concerns.

Senator PRYOR. Mr. Lorber, then what would be your proposal for a fair study? I mean, do you object, for example as OPM does, to the unions being involved in choosing a consulting firm to do the work?

Mr. LORBER. No, employees should have involvement. The choice, for example, of one consulting firm causes us some concern. As we have heard, in the Wisconsin situation and others, the single consulting firm could easily lead to their own predetermined results which may have no relevance or response to reality.

Senator PRYOR. Let us say that Congress does get what people might say is a bum study or a study that was not accurate or im-

partial. You know there is nothing which says that Congress has to follow through and implement the recommendations of this commission.

Mr. LORBER. But I think the realities of public policy are such that when the director of OPM is mandated to report to the Congress what response OPM will undertake on the basis of the study, and once the Congress has expended its resources, the people have been selected, the thought that you could simply say the study is wrong and we will throw it out, I would respectfully suggest simply is non-reflective of public policy as practiced.

Senator PRYOR. Congress and the members of this Committee do not know what the facts are. We do not know what the facts are. We have OPM bringing us one set of facts, and we have the General Accounting Office bringing us another set of facts. We do not know what to believe.

What I am hearing from this panel is maybe you do not think that we should do anything. Is this correct?

Ms. THOMPSON. I would like to address that?

Senator PRYOR. Yes, please.

Ms. THOMPSON. I know probably speaking this and saying this in this town is rather a bizarre thought, where it seems where a person's value is based on the amount of paperwork he can create.

Private enterprise is very smart. People are very smart. The American people are extremely smart. I believe that for the most part the highest percentage of our population, if given the opportunity for education, given the opportunity to be out on their own and develop their own skills, they are going to get their own pay equity. They are going to demand their own pay equity.

Myself, as an employer, can offer a certain package to a prospective employee based on the benefits I can provide, based on the wages I can provide, based on my budget. A study may show that a secretary in my company is equal to a secretary in General Motors, but I do not have General Motors funding to provide those funds.

To hurt small enterprise, to give crutches to people that do not need them is, to me, very foolish. When it comes to studies, I suppose we could sit around and think, on a nice sunny afternoon, we could study most anything and find good and bad in most anything we really wanted to do.

I really believe that Congress has short time and has much more important issues to consider, ones where people maybe cannot take care of themselves, societal problems that you can truly help us in, ones that we do need help in.

Senator PRYOR. Now, what I am hearing is that you believe we should do nothing in this area?

Ms. THOMPSON. Absolutely.

Ms. VERGERONT. I am not quite in agreement with you.

You essentially asked two questions. You first of all said do we see a problem and secondly, should the Congress do a study. When you refer to a problem, I believe you are talking about what is called the pay gap between men and women's pay. Indeed, there is a pay gap.

It is important to look at why there is a pay gap there and what has been happening over the past ten years since the civil rights bills have been passed that deal with discrimination.

I think you see that when you compare men in the job market to women, that men in the job market generally have been there for a longer period of time. Women traditionally have taken time out from the job market and then go back in, and thus lose a certain amount of seniority.

The pay gap is closing, it is now from .58 up to .64 on the dollar and when you look at men and women entering the market for the first time, with the same education, the same background, there virtually is no pay gap at all.

I am suggesting to you that the problem is helping women integrate into the work force and not artificially raising the pay scales of certain jobs where women have traditionally congregated because they were easy in, easy out kind of jobs, so that the flexibility of in and out of the marketplace was easy for women.

I am suggesting a far better way to address that pay gap is to allow women to get into more non-traditional jobs and to stop the segregation of women into, for example, clerical jobs or nursing or so forth. As that happens, you are going to see that pay come up also because you will not have the number of people in general that are willing to work in that job for that pay, so that the law of supply and demand will take over.

As far as the study, yes, indeed I do think the Congress should take up a study and look at its classification system and make sure that your pay is equitable and fair and that your classifications are in the right place. I cannot believe that you have not done that in 64 years. Is that right?

We do it about every seven years in Wisconsin.

The important thing to remember——

Senator PRYOR. By the way, in 1963, the Pay Equity Act was passed and, Ms. Thompson I will say this, I was not going to feed this back to you, but I will just comment that the U.S. Chamber testified in 1963 against the Pay Equity Act. They presented some horror stories that would be the result of the bill's passage and I do not think they have happened as a result of the Pay Equity Act.

I respect the U.S. Chamber very much, and I do not want to take them on this morning, but I see some alarm bells that have gone off today about this particular study. Maybe I am not as alarmed as I should be, but I am not as alarmed as the three of you are about this study.

Ms. VERGERONT. I just wanted to finish my statement.

Senator PRYOR. Certainly.

Ms. VERGERONT. Do the study, but do not use the comparable worth method of evaluation. Use an accepted method of evaluation that compares apples and apples, and does not try to compare apples and oranges.

Senator PRYOR. Well, I appreciate very much the three of you appearing. You have come from a long way and we are very indebted to you.

We will leave the transcript open for the next seven days in case any of our colleagues would like to submit further questions, and I may have a few myself.

You are a very good panel and we very much appreciate your views. Thank you, very much.

[Whereupon, at 11:06 a.m., the Subcommittee recessed to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

100TH CONGRESS
1ST SESSION

S. 552

To improve the efficiency of the Federal classification system and to promote equitable pay practices within the Federal Government and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1987

Mr. EVANS (for himself, Mr. CRANSTON, Mr. GLENN, Mr. COHEN, Mr. LEVIN, Mr. HEINZ, Mr. ADAMS, Mr. BAUCUS, Mr. BINGAMAN, Mr. BURDICK, Mr. DECONCINI, Mr. DODD, Mr. KERRY, Mr. LEAHY, Mr. MELCHER, Mr. METZENBAUM, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. PACKWOOD, Mr. PELL, Mr. RIEGLE, Mr. SIMON, Mr. SPECTER, and Mr. STAFFORD) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To improve the efficiency of the Federal classification system and to promote equitable pay practices within the Federal Government and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employee Compensation Equity Act of 1987".

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) the term "position" means employee positions that are subject to classification under chapter 51 of title 5, United States Code, or the job-grading system under subchapter IV of chapter 53 of such title;

(2) the term "Commission" means the Commission on Compensation established by section 3;

(3) the term "Director" means the Director of the Office of Personnel Management;

(4) the term "employee" means an individual to whom chapter 51 or subchapter IV of chapter 53 of such title applies;

(5) the term "labor organization" shall have the meaning given such term by section 7103(a)(4) of such title;

(6) the term "economic analysis" means a method of analyzing differentials in pay between and among positions within occupations in order to determine if, and the extent to which, those differentials are attributable to factors such as seniority, merit, productivity, education, work experience, geographic factors, supply and demand factors, or any other factor exclusive of sex, race, or ethnicity, and

(7) the term "objective job evaluation analysis" means a quantitative method of rating positions within occupations based upon factors such as the skill, effort,

responsibilities, qualification requirements, and working conditions involved so that comparisons may be made with respect to the positions and occupations involved.

ESTABLISHMENT

SEC. 3. There is established a commission to be known as the Commission on Compensation Equity.

STUDY

SEC. 4. (a) To determine whether distinction between rates of basic pay for Federal jobs in executive agencies of the United States Government reflect substantial differences in the duties, difficulty, responsibility, and qualification requirements of the work performed, in accordance with sections 5101 and 5341 of title 5, United States Code, and are not based on considerations of sex, race, or national origin, the Commission shall provide, by contract with the consultant selected pursuant to section 9, for—

(1) the conduct of a study of classification, grading, and pay-setting processes within and between the position-classification system under chapter 51 of such title and the job-grading system under subchapter IV of chapter 53 of such title, using standard objective job-evaluation and economic analysis techniques, to determine whether the development or implementation of these processes results in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is dispropor-

tionately represented that are not in proportion to the duties, difficulty, responsibility, and qualification requirements of the work performed; and

(2) the preparation and submission of a report containing the findings of such study, including a list of any such positions and the extent of the differences in the rates of pay in such cases.

(b) For the purposes of this section, the term "executive agency" shall have the meaning given such term by section 105 of title 5, United States Code.

REPORT

SEC. 5. (a) Not later than eighteen months after the effective date of this Act, the Commission shall transmit to the appropriate Committees of the Congress the report required by section 4 and shall provide a copy of this report to the Director.

(b) The report shall include—

(1) the Commission's findings resulting from the study; and

(2) the Commission's recommendations (other than any recommendation which would result in a reduction in the rate of pay payable for any position) for such administrative or legislative actions, or both, as it considers appropriate (including any recommendations for modification of the provisions of section 8).

(c) Not later than ninety days after the Commission submits its report to the appropriate Committees of the Congress pursuant to paragraph (a), the Director shall submit to such Committees and the Commission a report commenting on the Commission's report and specifying the Director's plan (and timetable therefor) to carry out each of the Commission's recommendations or, in the event that the Director does not specify a plan to carry out one or more of such recommendations, the Director's reasons for not specifying such plan.

(d) Not later than sixty days after the Director submits the report to the appropriate committees of the Congress pursuant to paragraph (c), the Commission shall submit to such Committees any additional comments that the Commission deems appropriate in response to the Director's report.

(e) The consultant's study and any findings, conclusions, recommendations, or comments by the consultant or the Commission under this Act with respect to such study shall be considered to be of an advisory nature only.

APPOINTMENT OF COMMISSION

SEC. 6. (a)(1) The Commission shall be composed of nine members as follows:

(A) Two appointed by the President of the United States.

(B) One appointed by the majority leader of the Senate.

(C) One appointed by the minority leader of the Senate.

(D) One appointed by the Speaker of the House of Representatives.

(E) One appointed by the minority leader of the House of Representatives.

(F) Three appointed by the Director to represent Federal employee labor organizations, one designated (and certified to the Director) by each of the three respective labor organizations representing, as exclusive representatives, the largest number of individuals occupying positions that are subject to chapter 51 or subchapter IV of chapter 53, of title 5, United States Code.

(2) Members of the Commission shall not be members of Congress and shall, to the maximum extent practicable, be chosen from among persons who have extensive knowledge and technical expertise in the major areas of the Commission's consideration and study.

(b) All appointments under subsection (a) shall be made not later than sixty days after the effective date of this Act.

ADMINISTRATIVE PROVISIONS

SEC. 7. (a)(1) The President shall designate a Chairman of the Commission from among the Commission members. The Commission shall elect a Vice Chairman from among its

members. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman.

(2) The Commission shall adopt such rules and regulations as it considers necessary to establish its procedures and to govern the manner of its operations, its organization, and its personnel.

(3) Five members of the Commission shall constitute a quorum.

(4) Any vacancy in the Commission shall not affect its powers except to satisfy the quorum requirements in paragraph (3). Such vacancy shall be filled in the manner in which the original appointment was made.

(b) Each member of the Commission who is not an officer or employee of the United States Government shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for level IV of the Executive Schedule for each day the member is engaged in the performance of the duties of the Commission.

(c)(1) The Commission may appoint, terminate, and subject to paragraph (2), fix the compensation of such personnel as it considers advisable to employ to assist in the performance of its duties, without regard to the civil service laws, the provisions of title 5, United States Code, or any other law relating to the number, classification or compensation of employees. The Commission also may procure temporary and

intermittent services in carrying out its responsibilities. The Chairman shall appoint an executive director of the Commission with the approval of a majority of the Commission members.

(2) An employee of the Commission may not receive compensation at a rate exceeding the rate of pay payable for grade GS–18 under section 5332 of title 5, United States Code.

(3) Service of an individual as a member of the Commission or as an employee of the Commission shall not be considered service in an appointive or elective position in the United States Government for the purposes of section 8344 of title 5, United States Code.

(d) All members and employees of the Commission and all individuals performing temporary or intermittent services for the Commission shall, while performing the duties of the Commission, be paid per diem, travel and transportation expenses in the same manner as provided for under subchapter I of chapter 57 of title 5, United States Code.

(e)(1) The Commission or any member authorized by the Commission may, for the purposes of carrying out this Act, hold such hearings and sit and act as such times and places, take such testimony, have such printing and binding done, enter into such contracts and other arrangments, with or without consideration or bond, and take such other actions as

the Commission considers advisable, to the extent that amounts provided pursuant to section 11 are available. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member.

(2) The Commission is authorized to obtain directly from any officer, department, agency, establishment, or instrumentality of the United States Government such information, suggestions, estimates, and statistics as the Commission considers necessary to carry out this Act. Each such officer, department, agency, established or instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made on behalf of the Commission.

(3) The Commission may use the United States mails and receive administrative support from the Administrator of General Services in the same manner and under the same conditions as departments and agencies of the United States Government.

(4) No officer or agency of the United States Government shall require the Commission to submit any report, recommendation, or other matter to any such officer or agency for approval, comment, or review before submitting such report, recommendation, or other matter to Congress or committees of Congress to the President.

(f) The Commission shall meet from time to time, as its members consider appropriate.

TERMINATION

SEC. 8. Ninety days after the date the Commission submits its comments pursuant to section 5(d), the Commission shall cease to exist.

CONSULTANT

SEC. 9. (a) The Commission shall solicit from the Comptroller General of the United States, the Congressional Office of Technological Assessment, and the National Academy of Sciences a list of consultants which on the basis of their objectivity, extensive knowledge and technical expertise in the matters to be studied pursuant to this Act are appropriate to conduct the study required by section 4.

(b) The Comptroller General of the United States and the Congressional Office of Technological Assessment shall provide the lists to the Commission within sixty days after the date of such solicitation pursuant to (a).

(c) From among the consultants on the lists provided pursuant to subsection (a), the Commission shall select one consultant to conduct such study.

CONSTRUCTION

SEC. 10. Nothing in this title shall be construed to limit any of the rights or remedies provided under the Civil Rights Act of 1964, section 6(d) of the Fair Labor Standards Act of 1938, or any other provision of law relating to discrimination

on the basis of race, color, religion, sex, national origin, handicap, or age.

FUNDING

SEC. 11. Of the sums appropriated to the Office of Personnel Management for general operating expenses for fiscal year 1988 and 1989, such amount as is estimated by the Comptroller General of the United States as necessary to carry out this Act shall be made available to pay the expenses of the Commission and shall remain available for such purpose until September 30, 1990.

EFFECTIVE DATE

SEC. 12. This Act shall take effect on October 1, 1987.

STATEMENT OF
HONORABLE CONSTANCE HORNER, DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

on

S. 552

THE FEDERAL EMPLOYEE COMPENSATION EQUITY ACT OF 1987

APRIL 22, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR THIS OPPORTUNITY TO PRESENT THE ADMINISTRATION'S VIEWS ON S. 552, THE "FEDERAL EMPLOYEE COMPENSATION EQUITY ACT OF 1987." IT IS A PLEASURE TO PARTICIPATE IN THE SUBCOMMITTEE'S FIRST HEARING ON FEDERAL PAY ISSUES IN THIS CONGRESS.

THE ADMINISTRATION IS A STRONG ADVOCATE OF EQUAL PAY FOR EQUAL WORK AND DOES NOT ACCEPT WAGE DISCRIMINATION BASED ON SEX, RACE, OR OTHER ILLEGAL FACTORS. HOWEVER, WE STRONGLY OPPOSE THE ENACTMENT OF S. 552. WE DO NOT BELIEVE IT SERVES THE BEST INTEREST OF WOMEN OR OTHER EMPLOYEES IN THE FEDERAL GOVERNMENT, AND WE DO NOT BELIEVE IT OFFERS TRUE PAY EQUITY FOR FEDERAL EMPLOYEES.

BEFORE COMMENTING ON THE SPECIFICS OF THE BILL, I WOULD LIKE TO

POINT OUT A SUCCESS STORY THAT HAS BEEN LOST IN THE CONTINUING DEBATE ABOUT PAY EQUITY. IN DRAMATIC NUMBERS, FEDERAL WOMEN ARE MOVING INTO NON-TRADITIONAL, HIGHER-PAYING OCCUPATIONS. BECAUSE OF THE GOVERNMENT'S EMPHASIS ON EQUAL EMPLOYMENT OPPORTUNITY AND BECAUSE OF CHANGES IN WOMEN'S OCCUPATIONAL DECISIONS, ATTACHMENT TO THE WORK FORCE, AND PERSONAL PREFERENCES, WOMEN ARE MAKING REAL PROGRESS IN NARROWING THE MALE/FEMALE WAGE GAP IN THE FEDERAL WORK FORCE.

OVER THE PAST DECADE, THE EXTENT OF OCCUPATIONAL CHANGE EXPERIENCED BY FEMALE FEDERAL EMPLOYEES HAS BEEN IMPRESSIVE. IN 1976, WELL OVER HALF OF THE WOMEN EMPLOYED BY THE FEDERAL GOVERNMENT WERE IN CLERICAL JOBS, WHILE ONLY ONE-FIFTH WERE IN PROFESSIONAL AND ADMINISTRATIVE JOBS. BY 1986, ONLY 41 PERCENT OF WOMEN WERE CLERICAL EMPLOYEES, WHILE THE NUMBER OF PROFESSIONAL AND ADMINISTRATIVE WOMEN HAD INCREASED TO 33 PERCENT, A 65% JUMP. DURING THIS PERIOD, THE PERCENTAGE OF WOMEN IN ALL OCCUPATIONAL GROUPS INCREASED, BUT THE INCREASE IN THE PERCENTAGE OF WOMEN IN THE PROFESSIONAL, ADMINISTRATIVE, AND TECHNICAL WORK FORCE WAS ESPECIALLY SIGNIFICANT. MOST ENCOURAGING WAS THE INFLUX OF WOMEN UNDER 35 YEARS OF AGE INTO HIGHER-PAYING OCCUPATIONS WHICH WERE PREVIOUSLY DOMINATED BY MEN. THIS TREND HAS BEEN SO PRONOUNCED THAT FEMALES NOW COMPRISE 36 PERCENT OF ALL YOUNG PROFESSIONALS, 49 PERCENT OF ALL YOUNG ADMINISTRATIVE WORKERS, AND 60 PERCENT OF THE YOUNG TECHNICAL WORKERS. THIS GENERAL HEIGHTENING OF WOMEN'S OCCUPATIONAL STATUS

IS THE RESULT OF MORE WOMEN ENTERING PREVIOUSLY MALE-DOMINATED OCCUPATIONS, AND MORE SIGNIFICANTLY, OF WOMEN TAKING ADVANTAGE OF THE EXTENSIVE OPPORTUNITIES AVAILABLE IN THE FEDERAL GOVERNMENT FOR UPWARD MOBILITY. FOR EXAMPLE, MORE THAN HALF OF ALL FEMALE CLERICAL EMPLOYEES HIRED IN 1976 HAVE NOW MOVED INTO OTHER, HIGHER-PAYING OCCUPATIONAL GROUPS. THUS, IN THE FEDERAL GOVERNMENT, CLERICAL JOBS NEED NOT PORTEND DEAD-END CAREERS. FOR EMPLOYEES WITH THE DESIRE, AMBITION, AND APTITUDE TO MOVE INTO OTHER CAREERS, THE PATHWAYS LIE OPEN.

DESPITE THIS STRONG RECORD OF PROGRESS, A WAGE GAP BETWEEN MEN AND WOMEN IN THE FEDERAL GOVERNMENT REMAINS. OVER THE PAST DECADE, THE RATIO OF WOMEN'S SALARIES TO MEN'S HAS INCREASED FROM 66 PERCENT TO 69 PERCENT. WHILE THIS PAY DIFFERENTIAL HAS SOMETIMES BEEN DESCRIBED AS THE RESULT OF DISCRIMINATION, THIS AGGREGATE NUMBER ACTUALLY SAYS VERY LITTLE, IF ANYTHING AT ALL, ABOUT DISCRIMINATION. IT SAYS FAR MORE ABOUT THE OCCUPATIONAL CHOICES OF MEN AND WOMEN, DIFFERENCES IN EDUCATIONAL ATTAINMENT, AND DIFFERENCES IN YEARS OF SERVICE.

AMONG THOSE GROUPS WHERE WOMEN'S AND MEN'S OCCUPATIONAL CHOICES AND WORK FORCE ATTACHMENT SHOW GREATER SIMILARITY -- FOR EXAMPLE AMONG EMPLOYEES UNDER AGE 35 -- GREATER PROGRESS IN NARROWING THE GAP IS EVIDENT. AMONG THIS GROUP, FEMALES EARNED 78 PERCENT OF WHAT MALES EARNED IN 1986, UP FROM 73 PERCENT IN 1976. IF ONE CONSIDERS SPECIFIC OCCUPATIONAL GROUPS, BY 1986 THE GAPS WERE

DRAMATICALLY DECREASED. FOR EXAMPLE, FEMALE BLUE COLLAR WORKERS EARNED 89 PERCENT OF WHAT THEIR MALE COUNTERPARTS EARNED -- WHILE FEMALE PROFESSIONALS EARNED 90 PERCENT, ADMINISTRATIVE AND TECHNICAL EMPLOYEES 91 PERCENT, AND CLERICAL WORKERS 104 PERCENT OF THEIR MALE COUNTERPARTS.

SUBSTANTIAL CHANGE CAN ALSO BE SEEN IN WOMEN'S ADVANCEMENT INTO HIGHER GRADE LEVELS. WHILE WOMEN COMPRISED 17 PERCENT OF THE GS-9-12 POPULATION IN 1976, THEY COMPRISED 31 PERCENT IN 1986. WHILE ONLY 5 PERCENT OF THE GS-13-15 POPULATION IN 1976, THEY ACCOUNTED FOR OVER 13 PERCENT IN 1986. STILL GREATER POSITIVE CHANGE WAS EVIDENCED AMONG YOUNGER WORKERS. WOMEN'S RAPID ADVANCEMENT INTO HIGHER GRADE LEVELS WAS POSSIBLE BECAUSE THERE ARE NOW FAR MORE WOMEN IN THE "PIPELINE" AVAILABLE FOR PROMOTION. MOREOVER, AT THE HIGHER GRADE LEVELS (ABOVE GS-12), WOMEN GET HIGHER PERFORMANCE RATINGS THAN THEIR MALE COLLEAGUES AND ARE PROMOTED AT A FASTER RATE.

CLEARLY, THE RECORD OF WOMEN'S CAREER ADVANCEMENT IN THE FEDERAL GOVERNMENT OVER THE PAST DECADE IS IMPRESSIVE AND THE PACE OF CHANGE IS ACCELERATING. MOREOVER, THE PATTERN FOR THE FUTURE IS CLEARLY IMPRINTED IN THE FUNDAMENTAL OCCUPATIONAL AND GRADE LEVEL CHANGES REGISTERED BY WOMEN. OUR OPEN EMPLOYMENT SYSTEM, TOGETHER WITH WOMEN'S HIGHER CAREER EXPECTATIONS, CHANGING JOB PREFERENCES, AND GREATER LABOR FORCE ATTACHMENT, ARE WORKING IN CONCERT TO MOVE WOMEN INTO HIGHER-PAYING OCCUPATIONS AND HIGHER

GRADE LEVELS. AS THIS TREND CONTINUES, AND LEVELS OF EDUCATION AND EXPERIENCE CONTINUE TO INCREASE, FEMALE/MALE PAY DIFFERENTIALS WILL CONTINUE TO DECREASE.

VIEWED IN THIS CONTEXT, S. 552 IS COUNTERPRODUCTIVE. ALTHOUGH THIS BILL IS MIS-TERMED A PAY EQUITY BILL, IT ADOPTS BOTH THE METHODOLOGY AND THE INTENT OF COMPARABLE WORTH THEORY. THIS THEORY IS BASED, IN PART, ON THE UNDERLYING PREMISE THAT STRONG OCCUPATIONAL BARRIERS HAVE PREVENTED OR HINDERED WOMEN'S ADVANCEMENT OUT OF TRADITIONALLY FEMALE JOBS. THESE BARRIERS ARE ASSUMED TO HAVE ALLOWED EMPLOYERS TO SUBJECT "WOMEN'S JOBS" TO SYSTEMATIC AND DISCRIMINATORY UNDERPAYMENT. THE SOLUTION PROFFERED BY COMPARABLE WORTH THEORY FAILS TO ADDRESS THE ALLEGED OCCUPATIONAL BARRIERS. INSTEAD, IT CALLS FOR "SEPARATE BUT EQUAL" TREATMENT OF WOMEN LEADING TO INCREASES IN SALARIES FOR TRADITIONALLY FEMALE-DOMINATED OCCUPATIONS. THIS IGNORES MARKET SOLUTIONS IN FAVOR OF ADMINISTRATIVE SOLUTIONS BASED ON WHOLLY SUBJECTIVE CONCEPTIONS OF "INTRINSIC JOB WORTH."

THE PREMISE ON WHICH COMPARABLE WORTH RELIES IS FAULTY, AND THE SOLUTION UNJUSTIFIABLE. AT A TIME WHEN WOMEN HAVE MADE TREMENDOUS PROGRESS MOVING OUT OF TRADITIONALLY FEMALE JOBS, ADOPTION OF A POLICY TO RAISE WAGES IN FEMALE-DOMINATED JOBS, THEREBY REINFORCING SEXUAL STEREOTYPES AND DETERRING OCCUPATIONAL CHANGE, WOULD RETARD CAREER ADVANCEMENT BY WOMEN IN THE FEDERAL WORK FORCE BY ARTIFICIALLY INFLATING FEDERAL PAY IN THESE

OCCUPATIONS.

EVEN IN THE ABSENCE OF SUCH SUBSTANTIAL OCCUPATIONAL CHANGE, THE ADMINISTRATION FINDS THE "COMPARABLE WORTH" GOAL IMPLIED BY S. 552 UNACCEPTABLE. THE FEDERAL GOVERNMENT HAS HAD ITS OWN DISAPPOINTING EXPERIENCE WITH A CLASSIFICATION AND PAY SYSTEM THAT RELIES TOO HEAVILY ON RELATIVE DIFFERENCES IN THE DIFFICULTY, RESPONSIBILITY, AND QUALIFICATION REQUIREMENTS OF THE WORK PERFORMED. THIS APPROACH HAS BEEN AT THE EXPENSE OF A PROPER EMPHASIS ON MARKET RATES AND PERFORMANCE BY INDIVIDUAL EMPLOYEES. A SYSTEM WHICH IS INSUFFICIENTLY RESPONSIVE TO MARKET INFLUENCES CANNOT FUNCTION EFFECTIVELY IN THE LONG RUN. IN FACT, IT CANNOT FULLY MEET THE BASIC CRITERION OF A PROPERLY FUNCTIONING PAY SYSTEM: THE ABILITY TO ATTRACT, RETAIN, AND MOTIVATE CAPABLE EMPLOYEES.

COMPARABLE WORTH-TYPE SYSTEMS DO NOT SERVE TO BENEFIT WOMEN OR OTHER EMPLOYEES. KEY TO WOMEN'S ADVANCEMENT ARE: EQUAL PAY FOR EQUAL WORK; PROHIBITION OF INTENTIONAL PAY DISCRIMINATION; ABSENCE OF OCCUPATIONAL BARRIERS TO ENTRY AND PROMOTION; ENCOURAGEMENT OF OCCUPATIONAL MOBILITY; AND EMPHASIS ON PERFORMANCE RATHER THAN SENIORITY. COMPARABLE WORTH OFFERS NONE OF THESE ATTRIBUTES.

I WOULD LIKE TO BRIEFLY COMMENT ON SOME OF OUR OBJECTIONS TO SPECIFIC FEATURES OF S. 552. THIS LEGISLATION WOULD ESTABLISH A

COMMISSION TO OVERSEE A STUDY OF CLASSIFICATION, GRADING, AND PAY-SETTING PROCESSES USING "STANDARD, OBJECTIVE, JOB EVALUATION AND ECONOMIC ANALYSIS TECHNIQUES." THE STUDY WOULD BE CONDUCTED BY A CONSULTANT CHOSEN BY THE COMMISSION.

THE "ECONOMIC ANALYSIS" CALLED FOR IN THE BILL PRESUPPOSES THAT SEX, RACE, OR ETHNICITY OF THE WORKERS ARE THE REASONS FOR ANY PAY DIFFERENTIALS THAT CANNOT BE TRACED TO OTHER MEASURABLE FACTORS. THIS PRESUPPOSITION IS FLAWED. THE REASONS FOR PAY DIFFERENTIALS BETWEEN WOMEN, MEN, MINORITIES, OR ETHNIC GROUPS REFLECT NUMEROUS NONDISCRIMINATORY FACTORS, INCLUDING MANY WHICH ARE NON-MEASURABLE: THE FACT THAT PEOPLE ENTER THE WORK FORCE WITH DIFFERENT WORK PREFERENCES, CAREER EXPECTATIONS, RESTRICTIONS ON GEOGRAPHIC MOBILITY, LEADERSHIP GOALS, AND OTHER ATTITUDES AND PREFERENCES. THE EXPLANATION MAY BE, FOR INSTANCE, SIMPLY THAT THE JOBS UNDER STUDY ARE FOUND IN DIFFERENT PAY SYSTEMS, WITH ENTIRELY DIFFERENT BASES, PRINCIPLES, STRUCTURES, AND FUNDAMENTAL ASSUMPTIONS. THE EXISTENCE OF UNEXPLAINED PAY DIFFERENTIALS SIMPLY POINTS TO OUR INABILITY TO IDENTIFY AND MEASURE ALL POSSIBLE FACTORS THAT COULD ACCOUNT FOR THE DIFFERENCES. WHILE DISCRIMINATION MAY ACCOUNT FOR SOME -- OR NONE -- OF THIS UNEXPLAINED DIFFERENTIAL, THE STUDY REQUIRED BY S. 552 IS OF NO HELP IN IDENTIFYING SUCH DISCRIMINATION. ALL THE STUDY CAN DO IS IDENTIFY AN UNEXPLAINED PAY GAP BETWEEN TWO JOBS THAT HAVE BEEN SUBJECTIVELY DETERMINED TO BE "COMPARABLE."

THE BILL ALSO CALLS FOR AN "OBJECTIVE JOB EVALUATION ANALYSIS" WHICH IS ESSENTIALLY A POSITION CLASSIFICATION SCHEME THAT EXPRESSES ITS JUDGMENTS IN THE FORM OF NUMERICAL RATINGS. THERE ARE VERY MANY DIFFERENT POSITION CLASSIFICATION SCHEMES IN USE TODAY. THEY ARE USEFUL TOOLS FOR SORTING JOBS INTO PREDETERMINED CATEGORIES FOR CONVENIENCE IN ADMINISTERING PAY PLANS AND OTHER PERSONNEL MANAGEMENT PROGRAMS. SOME EXPRESS THE RESULTS IN WORDS; OTHERS IN NUMBERS. IN THE FINAL ANALYSIS, HOWEVER, EVERY CLASSIFICATION SCHEME REFLECTS A SET OF VALUES AND BOILS DOWN TO A STRUCTURED PLAN FOR MAKING SUBJECTIVE JUDGMENTS ABOUT JOBS.

RESPONSIBLE PRACTITIONERS DO NOT CLAIM THAT ANY CLASSIFICATION SCHEME IS OBJECTIVE. EXPRESSING THE RESULT OF THE JOB EVALUATION PROCESS IN THE FORM OF A NUMBER DOES NOT OBSCURE THE FACT THAT THE NUMBER MERELY REPRESENTS A SUBJECTIVE JUDGMENT ABOUT THE PLACE OF A SPECIFIC JOB WITHIN A PRESCRIBED CLASSIFICATION SCHEME, WHICH, IN TURN, REFLECTS THE VALUES OF THAT SCHEME. THEREFORE, THE DEFINITION IN THIS SUBSECTION OF THE BILL REFERS TO SOMETHING THAT DOES NOT EXIST WHEN IT CALLS FOR AN "OBJECTIVE" JOB EVALUATION ANALYSIS. MOREOVER, A JOB-EVALUATION IS ONLY ONE PART OF AN OVERALL COMPENSATION SYSTEM. SUCH A SYSTEM ALSO PROPERLY RELIES HEAVILY ON THE MARKET.

THE BILL REQUIRES THAT THE CONSULTANT'S REPORT INCLUDE A LIST OF ANY POSITIONS FOUND IN WHICH THE RATES OF PAY FOR DIFFERENT SEXES, RACES, OR ETHNIC GROUPS ARE NOT IN PROPORTION TO THE

DUTIES, DIFFICULTY, RESPONSIBILITY, AND QUALIFICATION REQUIREMENTS OF THE WORK PERFORMED. THE LIST PRODUCED BY THE STUDY WOULD DEPEND ON WHICH CONSULTANT DOES THE STUDY, WHAT SCHEME OF JOB EVALUATION IS USED, AND WHAT OCCUPATIONS ARE SAMPLED. A DIFFERENT CONSULTANT, USING A DIFFERENT SCHEME, SAMPLING A DIFFERENT MIX OF OCCUPATIONS, WOULD YIELD A DIFFERENT LIST. THEREFORE, THE LIST WOULD BE THE CHANCE RESULT OF THE SAMPLE CHOSEN, THE JOB EVALUATION SCHEME USED, AND THE CONSULTANT CHOSEN. IT WOULD HAVE NO RELIABLE MEANING AS A GUIDE FOR FURTHER ACTION OR RECOMMENDATIONS. NEVERTHELESS, THE BILL CARRIES THE FUNDAMENTAL ASSUMPTION THAT ANY DIFFERENCES IN PAY RATES THE CONSULTANT FINDS BUT CANNOT EXPLAIN MUST BE BASED ON THE SEX, RACE, OR ETHNICITY OF THE WORKERS. OPM BELIEVES THIS IS NOT A VALID ASSUMPTION.

FINALLY, THE COMPOSITION OF THE COMMISSION IS NOT DESIGNED TO ACHIEVE A BALANCE OF VIEWPOINTS. THE INTERESTS OF FEDERAL EMPLOYEE UNIONS AND ADVOCATES OF COMPARABLE WORTH ARE REPRESENTED IN THE BILL, BUT THOSE OF FEDERAL PROGRAM MANAGERS WITH MISSIONS TO ACCOMPLISH, OF THE CENTRAL PERSONNEL MANAGEMENT AGENCY RESPONSIBLE FOR ADMINISTERING CLASSIFICATION AND PAY IN THE FEDERAL GOVERNMENT, OF THE BUDGET AND FINANCIAL ORGANIZATIONS OF THE GOVERNMENT, OR OF THE TAXPAYING PUBLIC ARE NOT SPECIFICALLY COVERED, AMONG OTHER POSSIBLE VIEWPOINTS.

FOR THESE REASONS -- THAT THE UNDERLYING THEORY IS FLAWED AND

THAT THE COMPOSITION OF THE COMMISSION CREATES BIAS -- THE ADMINISTRATION STRONGLY OPPOSES THE ENACTMENT OF S. 552. THE SITUATION OF WOMEN IN THE FEDERAL GOVERNMENT IS GOOD, AND IT'S GETTING BETTER. I URGE THE CONGRESS NOT TO ADOPT A PROPOSAL WHICH WILL SERVE ONLY TO HALT THIS PROGRESS BY DISCOURAGING ADVANCEMENT. THANK YOU. I WOULD BE GLAD TO ANSWER ANY QUESTIONS.

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

Office of the Director

MAY 7 1987

Honorable David H. Pryor
Chairman, Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
U.S. Senate
Washington, D.C. 20510

Dear Senator Pryor:

I appreciated the opportunity to testify on S. 552, and would like to comment further on three issues raised at the April 22, 1987 hearing: 1) whether the Federal government's classification and pay system embodies the prejudices against women present in society in 1923 (the year the system was established in law); 2) whether the Federal government's classification and pay system has been studied since 1923; and 3) whether a third party is needed to sort out the differences between GAO and OPM concerning Federal workforce statistics.

Regarding the first issue, some advocates of S. 552 maintain that a classification and pay system created in 1923 must have embodied the prejudices and biases of that era, when women's work was allegedly held in low esteem and therefore relegated to low pay status. This claim, however, is not backed up by an historical review of the 1923 Classification Act and the intentions of its supporters. In fact, the framers of the Act saw the creation of the classification system -- a landmark in U.S. employment law -- as the means to overcome wage discrimination against women in the Federal service and, by extension, in society. They explicitly intended it to be the solution to that problem. Feminist organizations of that era, strong and influential, fresh from victory in securing the right to vote for women, also saw the creation of the classification system in the 1923 Act as a means to overcome wage discrimination. In subsequent years, the feminist organizations thought that the Personnel Classification Board (charged with implementing the 1923 Act) was flagging in its zeal to use classification to overcome wage discrimination and raised a vigorous protest. For this reason, among others, the Board was abolished (in 1932), and classification responsibility was shifted to the Civil Service Commission. Providing equitable pay to women is not a recent concern, but one which the government has taken very seriously from 1923 to the present.

Regarding the second issue, the Federal government's classification and pay systems have been studied extensively since the Classification Act of 1923. No study has reported

findings of wage discrimination against women in the Federal government. To provide a partial listing, studies have been conducted by: the Brownlow Committee (1937), the Hoover Commission I (1949), the Hoover Commission II (1955), the Hanley Subcommittee (1969), the Oliver Task Force (1972), the Rockefeller Panel (1975), Hay Associates (1976), the Federal Personnel Management Project (1977), the Forrer Classification Task Force (1981), the Grace Commission (1983), and the National Academy of Public Administration (1983). Numerous studies have also been conducted by GAO, CBO, and the Civil Service Commission/OPM.

One of the most important studies was that conducted by the first Hoover Commission. Many of its recommendations were incorporated in the Classification Act of 1949, legislation which called for a major overhaul of the government's classification and pay system. The Act created a uniform classification/pay schedule for white collar employees -- known as the General Schedule -- and is the statute now in effect (Title 5, U.S. Code, Chapter 51). One area was not changed, however; the new Act maintained the fundamental principle of the 1923 Act: equal pay for substantially equal work. Thus the concern about wage discrimination embodied in the 1923 Act was in no way diminished by the 1949 Act.

Focusing on the more recent studies (those completed within the last 15 years), two general conclusions can be drawn:

- o A broad range of serious problems exists within the government's pay and classification systems; a full overhaul of these systems is needed, not quick fixes to deal with isolated elements.

- o In the balance between internal equity among positions (sought by comparable worth advocates) and external equity with the market and performance equity across employees, internal equity has been overemphasized. This has resulted in some workers being overpaid and others being underpaid in relation to labor market rates, with the expected consequent management problems. Greater sensitivity to market and merit must be inserted into the government's pay systems.

It is important to note that these conclusions hold regardless of the view taken toward the concept of comparable worth. The Forrer Classification Task Force -- set up during the Carter Administration -- was very sympathetic toward the concept of comparable worth. Yet, its report states the problem of balancing internal and external equity as follows:

"The General Schedule classification and pay system is considerably less sensitive to external market forces than most other classification and pay systems. How should the system be revised to provide the most desirable reconciliation of internal and external equities?"

The report concludes that while the government should not abandon the principle of internal equity across positions, its General Schedule pay system must be made more market sensitive.

The findings of the Hay Associates study are also worth noting. Hay Associates is one of the leading job evaluation firms, one which has been hired to establish comparable worth systems for a number of state and local governments. In 1976, Hay job evaluators applied their system to a sample of Federal General Schedule jobs and compared the results with those of the government's own classification and pay system. They found great similarity between the two classification systems in terms of factors and factor weights used; in fact, the correlation between rankings of positions between the two systems was quite high (r=+.94) No tendency was found for the government to rate female-dominated jobs too low or male-dominated jobs too high.

In regard to job pricing, Hay evaluators found a high level of consistency between the government's system and the Hay Salary Survey (of private sector pay rates) with regard to relative pay (e.g., a GS-15 would earn more than a GS-14), but a lower level of consistency with regard to absolute pay. Hay would make finer distinctions in pay than allowable by our limited number of grades. Further, Hay found that for jobs at grades 9 and above, the government provided higher salaries than would Hay's private sector clients. Only at the grade 7 level were government employees (slightly) underpaid relative to private sector rates. The competitiveness of job pricing at grade levels below GS-7 was indeterminate; Hay found jobs at these levels underpaid or overpaid depending on geographic location. Hay would advise locality pay at these levels, rather than nationally-based rates. While these findings are a decade old and might, therefore, be somewhat dated, the major conclusion still holds: the government's pay system lacks market sensitivity.

My staff is available to discuss these reports with your staff in greater detail.

The third point I would like to make concerns the apparent discrepancies between our workforce statistics and GAO's. My staff has already been in contact with GAO personnel, and we anticipate no difficulty reconciling the numbers. For example, you mentioned during the hearing that GAO claimed

that 70 percent of women employed by the Federal government were in clerical positions. According to GAO, this figure refers to the percentage female in the job grouping titled "General Administration, Clerical and Office Services". While women do comprise 70 percent of these positions, this job grouping contains not only clerical positions, but higher-paying technical and administrative positions as well. For example, this category includes management analysts (48 percent female), program analysts (45 percent female), computer specialists (31 percent female), and GAO evaluators (24 percent female). (These data are taken from the OPM publication "Occupations of Federal White-Collar and Blue Collar Workers", October 31, 1985.)

Further, the "General Administration, Clerical, and Office Services" job grouping is just one of 22 groups of occupations in the General Schedule; almost all of these groups contain a mixture of clerical, technical, administrative, and professional occupations. By taking into account all positions across all job groupings (white and blue collar), you can get a more accurate picture of the types of jobs women in the Federal government are doing. The most recent data available (March 1986) show that: 33 percent of women are in administrative and professional positions, 41 percent are in clerical positions, 21 percent are in technician positions, and 5 percent are in blue collar and other positions.

Much work needs to be done to develop a classification and pay system for the government which functions efficiently and fairly. Focusing on one element of the system, as does S. 552, will not get us to where we need to be. For this reason, we greatly appreciate your interest in gaining a broad-scope view of pay reform issues. I look forward to working with you to develop a pay system for the government workforce which is fair and equitable to Federal employees, the government, and the taxpayers.

Sincerely,

Constance Horner

Constance Horner
Director

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

Office of the Director

JUN 24 1987

Honorable David H. Pryor
Chairman, Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Pryor:

Thank you for your recent letter inviting our suggestions on the make-up of the Commission on Compensation Equity. Your concern for achieving balance within this group, as well as your more general concern for achieving broad-scope pay reform, is greatly appreciated.

Unfortunately, I am obliged to decline your request for suggestions on broadening the composition of the Commission. As I mentioned in my testimony, the Administration's objections to the bill go far beyond objections to the Commission itself. Our concern is that, even given a balanced Commission, S. 552 would be unable to produce unbiased results.

The fundamental flaws of the bill lie with the study methodology itself. The problem is that neither a job evaluation analysis nor an economic analysis can identify or prove discrimination. Concerning the job evaluation analysis, various systems could be developed by highly-regarded job evaluation experts, none of which might be materially better than our current system and each of which would produce very different results. In fact, a comparison of pay equity studies conducted by state governments shows they have rated similar jobs quite differently. Thus, one firm might find female-dominated jobs in the Federal government were underpaid while a second found them to be overpaid. With the highly subjective process of job evaluation, arriving at an "objective" determination of job worth is simply not feasible.

Concerning the economic analysis, similar studies performed on economy-wide data have shown that about one-quarter to three-quarters of the female/male earnings gap can be accounted for using quantifiable human capital variables (e.g., years of education, years of work experience, job tenure); however, the "residual" or unexplained gap cannot be labeled discrimination -- it is simply a measure of our inability to identify and measure all conceivable non-discriminatory factors. In fact, some of the most important variables -- motivation, ambition, career expectations, job

preferences, willingness to relocate, etc. -- cannot be adequately factored out of a comparison by any reasonable statistical methodology. Manipulating wage rates on the basis of such studies is, therefore, likely to be both inefficient and unjust.

Thus, as we see it, S. 552 purports to accomplish objectives it simply cannot accomplish through the methodologies employed. Moreover, its recommendations for change would focus on a single aspect of the existing classification and pay system -- a system which both Congress and the Administration agree is in need of a major overhaul. As you noted at the S. 552 hearing, pay reform issues deserve our immediate attention. It should be emphasized that one critical element of any pay reform plan would be ensuring the new system was designed and implemented in a non-discriminatory fashion.

I would be very glad to meet with you to discuss S. 552 and pay reform in greater detail. Again, I appreciate your efforts to seek a balanced approach to resolving these difficult pay issues.

The Office of Management and Budget advises that the enactment of S. 552 would not be in accord with the program of the President.

Sincerely,

Constance Horner

Constance Horner
Director

OFFICE OF PERSONNEL MANAGEMENT
QUESTIONS SUBMITTED BY SENATOR TED STEVENS

1. Question: I have had a chance to review the Department of Justice views concerning the possibility of the results of a study being used as evidence in litigation, which you know is of concern to me. The Department states that discrimination cases based on comparable worth arguments have not been successful, however, litigation in which plaintiffs use the results of such a study as evidence could result in unjustified court orders requiring the total restructuring of the entire federal pay and classification system. The Department does feel that language currently in S. 552 which says that the study "shall be considered to be of an advisory nature only" is wholly incapable of preventing the use of the study in litigation. Does OPM have a position on this issue?

Answer: Yes, we agree with the Justice Department that the provision in S. 552 which states that the study is only "advisory" in nature is insufficient to prevent its use as a basis for litigation. It is true that discrimination cases based on comparable worth arguments have not succeeded because of the recognition by the courts that current anti-discrimination law (the Equal Pay Act and Title VII of the Civil Rights Act of 1964) does not support findings of discrimination based on the comparable worth theory. Nevertheless, we are concerned that the conducting of studies of Federal pay and classification systems from a comparable worth perspective under the aegis of a commission predisposed to the comparable worth point of view would lead inevitably to findings of wage differential which would be labelled "discriminatory." Such seriously flawed findings would inevitably lead to litigation, and it would be difficult for a court to ignore a finding of discrimination by a purportedly neutral commission. Therefore, S. 552 could well lead to the establishment of a basis, where none now exists, for successful litigation against the Government under the comparable worth theory, and lead to a judicially imposed, expensive, and unjustified restructuring of the Federal pay and classification systems.

2. Question: You expressed concerns that the composition of the commission is not designed to achieve a balance of viewpoints. You make a good point. Can you be more specific about who should be included in the commission to ensure a proper balance?

Answer: Unfortunately, we do not believe that it would be fruitful to attempt to develop alternative configurations for the Commission. The Administration's objections to S. 552 go far beyond objections to the Commission itself. Our concern is that, whatever the composition of the Commission, the bill would be unable to produce unbiased results.

This is because of the fundamentally flawed methodology of the study itself. Neither a job evaluation analysis nor an economic analysis can identify or prove discrimination. Various job evaluation systems could be developed by highly-regarded experts in the field, none of which necessarily would be materially better than our current system and each of which could produce different results. With the highly subjective process of job evaluation, arriving at an "objective" determination of job worth is simply not feasible.

Thus, as we see it, S. 552 purports to accomplish objectives it simply cannot accomplish through the methodologies employed. Given the bias of the bill itself, we cannot conceive of any commission that could carry out the proposed studies and arrive at an unbiased result.

United States General Accounting Office

GAO Testimony

For Release
on Delivery
Expected at
9:00 a.m. EDT
Wednesday
April 22, 1987

S.552--THE FEDERAL EMPLOYEE COMPENSATION EQUITY ACT OF 1987

Statement of
Rosslyn S. Kleeman, Senior Associate Director
General Government Division

Before the
Subcommittee on Federal Services,
Post Office and Civil Service
Governmental Affairs Committee
United States Senate

GAO/T-GGD-87-14

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the proposed federal pay equity study called for in S.552. We have issued several reports in recent years concerning the issue of pay equity or federal pay and classification systems. One of these reports, Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems (GAO/GGD-85-37, Mar. 1, 1985), served as a basis of the legislation currently under consideration. Therefore, I would like to discuss the proposed legislation in light of the information provided in that report as well as other recent studies we have conducted in this area.

Let me begin by saying that, while we take no position on the desirability of a federal pay equity study, we believe S.552 reflects many of the suggestions made in our Options report as to how such a study could be constructed. For example, in that report we compared two potential approaches which could be used to study the pay equity issue in the federal workforce--economic analysis and job content analysis--and suggested that a combination of the two approaches may be the best study method. Therefore, we believe the bill's prescription to utilize both job evaluation and economic analysis techniques is proper.

We also believe that the bill's designation of a Commission on Compensation Equity to oversee the proposed study is generally consistent with our conclusion that a steering committee is needed to resolve policy issues and provide overall direction to the conduct of the study. The experiences of states in conducting pay equity studies indicate that such steering committees can facilitate the objectivity needed in this type of analysis and should represent a broad spectrum of individuals with differing views on the pay equity issue. For a study at the federal level, members could include experts from the fields of equal employment opportunity, compensation, classification, and economics as well as representatives from Congress, women's groups, employee organizations, the private sector, and the Office of Personnel Management (OPM).

The bill does not, however, mandate that Commission membership be diverse. Except for three labor union representatives which are to be appointed by the Director of OPM, the proposed legislation is generally silent with regard to the backgrounds of the other Commission members. It does state that members shall not be Members of Congress and shall, to the maximum extent practicable, be chosen from among persons who have extensive knowledge and technical expertise in the major areas of the Commission's consideration and study (Section 6[a][2]).

Another suggestion in our Options report was that the steering committee call upon technical experts from a variety of fields for assistance in resolving technical and policy issues which may arise in the conduct of the study. The bill does not specifically create such a group of experts, but neither is the Commission precluded from forming such a group.

The study called for in S.552 would analyze the classification, grading, and pay setting processes "within and between" the white-collar General Schedule (GS) and the blue-collar Federal Wage System (FWS) to determine whether "distinction(s) between rates of basic pay for Federal jobs in executive agencies of the United States Government reflect substantial differences in the duties, difficulty, responsibility, and qualification requirements of the work performed..." The GS and FWS systems cover 83 percent of federal civilian employees outside the Postal Service. We believe it is reasonable to focus on these two systems rather than trying to include all of the 60 or more federal pay systems within the study. In this manner, the scope of the study will be significantly reduced, and, at the same time, cover a large proportion of the federal workforce.

A study focusing on jobs within each of the two pay systems could be accomplished by utilizing one of the existing job evaluation techniques for all jobs within that system, provided

that the jobs being studied are properly analyzed and described, standards accurately reflect those descriptions, and the evaluation technique used is properly designed, weighted, and implemented. For example, in the GS system, the Factor Evaluation System (FES), used to evaluate about 34 percent of GS employees' jobs, could be used to evaluate all GS occupations included in the study.

The GS and FWS pay systems use different job evaluation methodologies and have different grade structures. A study of pay equity between the GS and FWS systems would require the development of a single job evaluation technique that could be used for both systems. This should not be a major technical impediment to the study, as such single evaluation systems can be developed and are prevalent in state personnel systems. In a recent survey we conducted at the request of Senators Cranston and Evans, 46 of the 48 states we contacted said they use job evaluation to set pay for their classified jobs, and 34 of those 46 states use only one evaluation system for all classified jobs (Pay Equity: Status of State Activities, GAO/GGD-86-141BR, Sept. 19, 1986). The development of a coordinated job evaluation and ranking system for all federal civilian positions was one of the objectives of the Job Evaluation Policy Act of 1970 (Public Law No. 91-216, 84 Stat. 72, Mar. 17, 1970), but that goal was never realized.

The type of evaluation system used to assign job worth is only one of several policy issues which will have to be resolved by the Commission. Another is the designation of the particular jobs which will be the object of the study. Section 4(a)(1) of S.552 states that the study should focus on positions "in which either sex is numerically predominant or any race or ethnic group is disproportionately represented." The degree of numerical predominance or disproportionality for inclusion in the study is not further specified. A number of state pay equity studies have considered jobs which have at least 70 percent male or female employees to be sex segregated. As we pointed out in our Options report, OPM Federal Civilian Workforce statistics indicate that, of the 885 GS and FWS occupational series, 735 (83 percent) are at least 70 percent male or female dominated. (Of the 735, 658 are male dominated and 77 are female dominated.) Thus, virtually all of the GS and FWS occupations would be included in a study using the 70 percent level as its measure of sex segregation. Using a 90-percent measure, the number of occupational series included would fall to 481 or 54 percent of all GS and FWS occupations (455 male dominated and 26 female dominated).

Few state pay equity studies have addressed the issue of race or ethnic group-based pay equity, so no clear definition exists as to what constitutes disproportionate representation of these groups. Using the 70 or 90 percent standards to identify occupational series in the federal government in which racial and

ethnic groups are overrepresented would result in almost no occupations being included in the study, so some other measure should be developed to identify those series. For example, OPM statistics indicate that, in 1984, blacks comprised 14.7 percent of the federal civilian white collar workforce. If a 30 percent proportion in a series were chosen as the measure of overrepresentation, 40 of the 885 occupations in the GS system would be included in the study. Setting the cut-off point at 20 percent would result in 105 occupations being included.

The bill requires that the study be completed and a report transmitted to the appropriate committees of Congress no later than 18 months after the effective date of the legislation. This, again, is consistent with the views of experts we spoke with in preparing our Options report. They said that studies taking longer than this amount of time could result in job documentations being out of date before completion of the study. The ability of the Commission to meet this deadline will depend, at least to some extent, on the resources available (i.e., having large enough staff available to perform tasks such as job analyses and evaluations) and the resolution of relevant policy issues as soon as possible.

Section 5(e) of S.552 says that the consultant's study and any findings, conclusions, recommendations, or comments by the consultant or the Commission will be advisory only. This, we

understand, is to preclude any effort to require that the study results be implemented. As we pointed out in a July 29, 1986, letter to Senators Cranston and Evans (B-217675), federal case law indicates employers are not required to implement any changes a study suggests, as this would create a disincentive to employers to conduct such studies at all (AFSCME v. State of Washington, 770 F.2d 1401 [9th Cir. 1985]; American Nurses Ass'n v. State of Illinois, 606 F. Supp. 1313 [N.D. Ill. 1985], rev'd, 783 F.2d 716 [7th Cir. 1986]). We also noted in that letter that the Supreme Court has held that employees are not entitled to backpay for a period of wrongful classification (United States v. Testan, 424 U.S. 352, 398-405 [1976]).

A study of the sort contemplated by S.552 could address classification and compensation concerns apart from the issue of pay equity. OPM and other agencies have expressed concerns on several occasions about the accuracy of position classifications and the assignment of grade levels based on those classifications. There are also related concerns about the age of the classification standards, as many of the standards are over 15 years old and the occupational studies and position descriptions may be out of date. OPM has issued virtually no new standards in over four years. Thus, the study could provide valuable information about the accuracy of a significant portion of the federal classification system.

Finally, allow me to reiterate a concern expressed in our Options report. While we stand ready to serve the interests of Congress on this matter, there is a question as to whether we could best serve those interests as a study participant or as an independent reviewer of study design, progress, and results. As described in the proposed legislation, we do not believe the role assigned the Comptroller General to provide, along with the Office of Technology Assessment and the National Academy of Sciences, a list of consultants appropriate to conduct the study would impinge on our role as an independent reviewer. However, to set the amount to be made available from OPM's budget to pay the expenses of the Commission would involve our Office in an administrative process which we believe would be inconsistent with the concept of independence and objectivity implicit in any review by our Office of the activities of the Commission. Accordingly, we urge that the reference to the Comptroller General in section 11 be deleted.

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That concludes my prepared statement, Mr. Chairman. I would be glad to answer any questions you may have.

GENERAL ACCOUNTING OFFICE RESPONSES TO WRITTEN QUESTIONS
SUBMITTED BY SENATOR PRYOR AND SENATOR STEVENS

QUESTION 1

Some opponents of the legislation assert that a study would leave the government open to litigation if Congress did not move quickly to consider the Commission's recommendations. What is your feeling on that? Given the various court decisions on this subject over the past few years, is such an outcome inevitable?

ANSWER

Recent cases interpreting title VII of the Civil Rights Act of 1964 indicate that the federal government would not automatically incur title VII liability for failing to implement the results of a pay equity study. See AFSCME v. State of Washington, 770 F.2d 1401 (9th Cir. 1985); American Nurses Ass'n v. State of Illinois, 606 F. Supp. 1313 (N.D. Ill. 1985), rev'd on other grounds, 783 F.2d 716 (7th Cir. 1986). As the district court in American Nurses Ass'n stated, title VII does not require an employer to "implement immediately whatever pay changes a particular study suggests, without regard to economic considerations, the labor market, bargaining demands or the possibility that some other study might produce different results." 606 F. Supp. 1313, 1318.

Of course, statistics drawn from pay equity studies may be used in title VII litigation. Courts have indicated that such statistics will be relevant to a determination of an employer's discriminatory intent if they are supported by independent corroborative evidence of discrimination. See AFSCME v. State of Washington, above, 770 F.2d 1401, 1407; Spaulding v. Univ. of Washington, 740 F.2d 686, 704 (9th Cir. 1984), cert. denied, 469 U.S. 1037 (1984).

QUESTION 2

Another concern of opponents is the potential cost of eliminating any pay gap. However, as I understand it, proponents of this legislation do not anticipate the total elimination of any pay gap. They recognize that seniority and merit principles contribute to salary disparities and the S. 552 is aimed at the portion of any wage gap that is attributable to discrimination. Do you believe that it is possible to identify that portion of any wage gap attributable solely to discrimination?

ANSWER

It is possible to determine what portion of a wage gap is due to compensable attributes included in the study such as the difficulty, responsibility, and qualification requirements of the work performed. The remaining gap may be due to discrimination

and other attributes (compensable or uncompensable) which were not included in the study and which are unrelated to those factors which were included. In order to identify what portion of a wage gap is due solely to discrimination, a workable definition of discrimination would have to be developed within the context of pay equity.

The stated purpose of the study is, according to section 4(a), "to determine whether distinctions between rates of basic pay for Federal jobs in executive agencies of the United States Government reflect substantial differences in the duties, difficulty, responsibility, and qualification requirements of the work performed...and are not based on considerations of sex, race, or national origin..." To accomplish this goal, the relationship of incumbents' sex, race, and national origin to their pay could be tested in the same manner as the compensable attributes listed above. While this process would not demonstrate the extent to which discrimination exists in the pay system, it could illustrate the extent to which factors other than those the statutes deem compensable are related to pay.

QUESTION 3

Would it be useful and prudent to include a GAO evaluation of the proposed study in the legislation? Why?

ANSWER

We do not believe that it is necessary to include such an evaluative role for GAO in the legislation, as such a review may be requested without a statutory mandate.

QUESTION 4

You believe that section 11, which says GAO should determine the amount of money available to the Commission, should be deleted. Do you believe another entity should be named to estimate the amount of operating funds or should the bill name a lump sum?

ANSWER

We take no position on how the funds for the Commission should be estimated or appropriated. One alternative would be to direct that the Commission, as one of its first orders of business, should estimate the funds it believes necessary to conduct the type of study it envisions. Any estimate of the cost

of the study would be dependent upon the resolution of numerous policy issues, such as the number of jobs to be studied and the type of evaluation methodology to be applied.

QUESTION SUBMITTED BY SENATOR STEVENS

QUESTION 5

In your testimony you stated that the study could address classification and compensation concerns apart from the issue of pay equity--for example, many of the existing classification standards are over 15 years old. What do you think of the advisability of spending money to study one aspect of pay equity when you appear to have stated that the classification system may virtually be out of date irrespective of the equity problem?

ANSWER

The existance of any equity problem is integrally related to the issue of whether the classification system reflects current job characteristics. If the job descriptions upon which the classification standards are based are out of date, this could lead to the underevaluation or overevaluation of those jobs. Therefore, the updating of job descriptions would be one of the first steps in the conduct of a federal pay equity study.

National Committee on Pay Equity

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2359A-1000

Testimony of

Eileen Stein, Chair

National Committee on Pay Equity

before the

Subcommittee on Federal

Services, Post Office

and

Civil Service

U.S. Senate

April 22, 1987

My name is Eileen Stein. I am Chair of the National Committee on Pay Equity, representing the Women's Legal Defense Fund on the Committee's Board of Directors, and a former General Counsel of the U. S. Commission on Civil Rights.

The National Committee on Pay Equity, founded in 1979, is the only national coalition working exclusively to achieve equal pay for work of comparable value. The Committee has over 300 organizational and individual members, including international labor unions and major women's and civil rights groups, as well as legal associations and educational and grassroots groups.

The purposes of the National Committee include:

- Eliminating race and sex discrimination from the wage setting process;
- Providing leadership, coordination and strategy direction to members and other pay equity advocates;
- Providing assistance and information to the growing number of public officials, labor unions, women's groups and other organizations and individuals pursuing pay equity;
- Stimulating new pay equity activities; and
- Bringing national and local attention to the issue of pay equity.

By virtue of a unanimous vote of the twenty-nine organizations on its Board of Directors, the National Committee on Pay Equity endorses S. 552, the Federal Employee Compensation Equity Act of 1987. This is legislation that will be supported by anyone who believes in fair, non-discriminatory compensation for women and minorities in the federal service.

There is no need for debate as to whether the federal government should adopt comparable worth as a basis for paying its workers. In fact, federal employment compensation is already based on the theory of comparable worth. The U. S. Code requires that all positions classified under the General Schedule be divided into 18 grades according to their level of difficulty and responsibility, and the qualifications required to perform them. Wages are set accordingly. Thus, GS-9 nurses are paid the same as GS-9 statisticians, auditors, or medical technicians, even though the work they do is very different, because it has been assessed as being of comparable worth. The statute that sets up this wage determination system provides that its purpose is to ensure that "variations in rates of basic pay paid to different employees will be in proportion to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed and to the contributions of employees to efficiency and economy in the service." 5 U.S.C.A. §5101(1)(B). In other words, work of comparable worth will be paid equally.

S. 552 is designed to determine whether this stated purpose is being achieved, or whether occupations in which women and minorities are concentrated have been undervalued. It is well known that there is a significant wage gap between the earnings of men and women employed on a full-time basis. S. 552 would provide for analyses to determine whether the differences in pay between predominately male positions or disproportionately white positions on the one hand, and predominately female positions or disproportionately minority positions on the other hand, can be explained by differences in their job content (e.g., skill, effort, responsibilities and working conditions) or by other job-related factors (e.g., seniority, merit, productivity, education, work experience). These analyses would be performed by a consultant chosen by a bipartisan Commission from a list of consultants designated by the Comptroller General of the United States, the Congressional Office of Technological Assessment, and the National Academy of Sciences on the basis of their impartiality, expertise and experience.

To the extent that differences in compensation cannot be explained by any job-related factors, it is not unreasonable to assume that they are the result of unlawful discrimination. The federal compensation system was established in 1923, at a time when a societal consensus existed that wives and mothers should not work outside the home, and that the destiny of women was to be wives and mothers. It was therefore assumed that women would

be employed only temporarily, if at all, and that they need not be paid on the same basis as men. It would be very surprising if these assumptions did not result in depressed wages for traditionally female occupations, which persist into the present. Similarly, given the unfortunate prevalence of racial discrimination in employment at the time the federal pay system was established, incorporation of racially discriminatory attitudes into the pay system would not be surprising.

Nevertheless, S. 552 makes no assumptions about the existence of discrimination in federal compensation. Nor does it mandate that any discrepancies in pay be corrected. It would merely require that a report containing the findings and recommendations of the Commission on Compensation be transmitted to the Director of OPM and the appropriate Committees of Congress. Whether corrective action is needed, and if so what form it should take, would be decided at a later date.

The modest scope of the bill ought to earn it unanimous support. A study of the federal pay system is long overdue, and should yield extremely useful information about the causes of the pay gap. Those who believe that the lower salaries of women and minorities can be explained by job-related factors ought to welcome such a study, by which their theory, if true, could be vindicated. The fact that instead they oppose the bill indicates fear that a comprehensive study would discredit their arguments.

Whatever the outcome of the investigation, however, the fundamental fairness that our government owes to its citizens dictates that it be made.

In fact, the federal government has lagged behind many state and local governments in addressing this issue. Twenty-eight states have conducted or are conducting studies similar to the one mandated by S. 552. Seventeen states have gone further and have already begun to make pay equity adjustments in the compensation paid to their employees. Numerous cities and counties have done the same. One notable example of state and local government activity comes from Minnesota, which passed legislation in 1982 implementing the results of its job evaluation study and establishing a pay equity policy for state workers. Two years later, in 1984, the state legislature passed another bill, which extended the policy to include local governments. As a result, all local jurisdictions in the state are required to have in place, by this year, job evaluation systems designed to achieve pay equity.

There is every reason to believe that these activities at the state and local level reflect broad grassroots concern about fairness and nondiscrimination in compensation. More than two years ago, at a time when only four states had begun to implement pay equity, NCPE commissioned a national poll to assess public opinion on the subject. The survey was conducted by Marttila &

Kiley, a Boston polling firm, and included random telephone calls to more than one thousand working Americans, including equal numbers of men and women. The results showed that 69% of U.S. workers think women are not paid as fairly as men for the work they do, and the reason they most frequently cited for this disparity was sex discrimination. In unprompted responses, both men and women most frequently pointed to discrimination as the primary cause of the wage gap, and 83% of those polled said they believe the wage gap is a serious problem that we should correct. There is no reason to think this level of concern has diminished since then; on the contrary, the greatly increased success of the pay equity movement around the country since that time suggests that it is growing.

NCPE is particularly pleased to note that S. 552, in assessing the fairness of the federal pay system, would mandate attention to disparities based on race and ethnic origin as well as sex. Though public discussions of pay equity focus most often on the pay gap between men and women, the pay gap between whites and people of color should not be overlooked. NCPE's recently published study entitled "Pay Equity: An Issue of Race, Ethnicity and Sex" analyzes the significance of all three of these factors as they are reflected in job segregation and the setting of wages. The study presents specific examples of race-based wage discrimination and the way in which pay equity can benefit men and women of color as well as white women. Although up to now

only three of the states that have begun implementing pay equity have addressed racial and ethnic inequities, our report concluded that all future job evaluation studies should focus on race and ethnicity as well as sex. We are therefore particularly pleased that the S. 552 study would do so.

In conclusion, the National Committee on Pay Equity strongly supports S. 552. The federal pay study it mandates is necessary to ensure that government employees are paid fairly in accordance with Title 5 of the U. S. Code, and without discrimination on account of sex, race or national origin.

NATIONAL
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STATEMENT BY

THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

BEFORE

THE SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE,

AND CIVIL SERVICE

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

ON

THE FEDERAL EMPLOYEE COMPENSATION EQUITY

ACT OF 1987

APRIL 22, 1987

Mr. Chairman and Subcommittee Members:

I appreciate this opportunity to appear before the Subcommittee to discuss the pay equity issue in general, and S. 552, the Federal Employees Compensation Equity Act of 1987 in particular. The National Federation of Federal Employees (NFFE) co-chairs both the Legislative and Litigation Task Forces of the National Committee on Pay Equity, and sits on the Board of Directors. NFFE has long recognized the inherent right of Federal employees to receive equal pay for work of comparable value, and we will continue to strive toward the enactment of S. 552 and the implementation of equitable pay in the Federal Government. We commend Senators Evans and Cranston for their leadership in raising the issue, and we look forward to working with the Subcommittee to ensure passage of the legislation.

The battle to bring fair pay practices to the Federal workforce has been a long one. Five years ago, we called for a thorough review of the pay disparities encountered by Federally-employed women and minorities and we have continued our efforts since then. The House of Representatives has passed legislation three times which would require the Federal Government to study its pay system for signs of inherent wage discrimination. Last year, despite the opposition of the committee chairman, thirty-four senators co-sponsored S. 519, a bill similar to S. 552. Federal employees' morale soared as a large portion of the workforce anticipated the long overdue study and its potential for reform.

The General Accounting Office (GAO) study commissioned by Congress and published March 1, 1985 (GAO/GGD - 85-37) clearly established that a quantifiable problem of wage inequity exists in the Federal Government. No longer can it be denied that Federally-employed women have been and continue to be concentrated in the lower paid grades. The study pointed out that, despite the almost equal distribution of male and female workers in the total workforce, women are paid $11,365 less than their male counterparts. Salaries are even lower for Black and Hispanic women. Furthermore, women are concentrated in a small number of low paying occupations at lower grade levels. Within the General Schedule (GS) series, the majority of women fall in grades one through six while most men tend to hold jobs in grades nine through fifteen.

This job segregation and wage discrimination was noted in another report by GAO ("Distribution of Male and Female Employees in Four Federal Classification Systems" - November 27, 1984). The study showed that, within the GS series, women are concentrated in the administrative, clerical and office services (252,443 out of 595,982 Federally-employed women). Seventy-three percent of the women in this series work in grades one through six and earn an average salary of $15,297. However, men employed in the same series generally fall under grades nine through fifteen and work in supervisory positions. So, not only are women being directed to predominantly female job categories, it also appears they have not been given enough opportunities to advance within these categories.

The study also showed that predominantly male jobs pay higher salaries than predominantly female jobs. For example, within the 1400 librarian series, women make up seventy percent of the work-force. However, they are concentrated in grades one through nine and earn an average annual salary of $15,705. Compared to the 2100 transportation series, in which seventy-five percent of the work-force is male, this salary is embarrassingly low. Men in this series are clustered in grades nine through fifteen and earn an average salary of $29,390.

This trend is paralleled among our own membership. Most women in NFFE are employed in traditionally female positions, such as clerk-typist, secretary, librarian, teacher and nurse. These women also are more likely than men to fall into lower-graded positions. Frankly, none of these women is paid in accordance with the skills, complexity, and demands required by her job.

For example, at NFFE Local 1438 in the Census Bureau in Jeffersonville, Indiana, only women perform the duties of the statistical clerk. These clerks analyze and reconcile data compiled from economic surveys of companies in retail, wholesale, and the manufacturing industries. In verifying the data, statistical clerks use calculators and a series of complex computer programs in order to adjudicate any contradictions from the survey forms. If any programs cannot be reconciled using the machines available, the clerks telephone and/or write to the respondents of the economic survey to correct the inaccuracies. The work must be performed within a tight time frame, since the surveys are used in compiling the annual economic census. The job is classified as a GS-6, paying approximately $16,521 per year.

Meanwhile, only men perform the duties of the truck driver. These workers drive an automatic transmission, three ton truck loaded with Bureau documents within the confines of a compound approximately three miles in diameter. The drivers do not load the documents, or unload them, because they have laborers who perform those duties. Essentially, the job requires the worker to drive the vehicle extremely short distances at slow speeds and then park the truck in a warehouse. Interestingly enough, no women have ever been found qualified for the position because experience driving such a vehicle is required. The job is set at a wage grade 6 level, paying $18,928 per year. Certainly an analysis of these positions would be critical in a pay equity study.

Other questions about equity in pay have arisen in the Indian hospitals where NFFE represents workers. A registered nurse in Parker, Arizona performs a variety of functions ranging from providing cardiopulmonary resuscitation (CPR) to emergency trauma patients, to dressing wounds, to administering medicines to patients with a variety of illnesses, to assisting in the delivery of newborn infants. The beginning RN earns approximately $15,000 per year. There are no male nurses at the Indian Hospital in Parker.

On the other hand, there are no women maintenance mechanics at the same facility. Hospital maintenance mechanics also perform a variety of duties, from maintaining electrical equipment, air conditioners and boilerplants. In addition, such mechanics are expected to perform some plumbing duties, carpentry, painting, and

groundskeeping. The maintenance mechanic's job description emphasizes that the work is dirty and greasy, that it is not unusual for the worker to lift between ten and forty pounds, and that he may be subject to call back after hours and on nonscheduled workdays. The maintenance mechanic at Parker IHS earns just over $21,000 per year.

The RN's job description does mention that she will have to work evenings, nights, weekends, and holidays on a regular basis and be subject to callbacks or extended shifts due to emergencies. However, it does not mention that the lifting of patients is a common duty. NFFE is currently filing a workers' compensation claim on behalf of a nurse who has permanently dislocated her shoulder from lifting a patient weighing approximately 175 pounds. Nor does the job description mention that the job is messy, although nurses are required to clean spilled blood and other bodily fluids, empty bedpans, and care for patients in a variety of unpleasant and unclean situations.

The fact that women are paid less than men in both the private and public sector is indisputable although the reasons for the obvious pay disparity are controversial. At the heart of wage inequity seems to be the long-held attitude that women are the "weaker sex." Therefore, female-dominated jobs are worth less than jobs held by men and should compensate the employee accordingly. Likewise, men have traditionally been perceived as the breadwinner and supporter of the family, thus requiring higher wages. This notion, perhaps above all misconceptions, is highly discriminatory and entirely inaccurate. Salaries should not be set on the basis of need. If this practice were followed, then men with larger families would be better paid than men with smaller or no families.

Employers in both the public and private sector have begun to stop thinking in these terms and instead are concentrating more on the worth of their employees' work. The concept of pay equity or comparable worth was developed to do just that. The goal of pay equity would ensure that equal salaries are paid to jobs requiring comparable skill, effort, and responsibility. More specifically, pay equity advocates a bias-free evaluation system that uses objective criteria to assess any given occupation. Despite these objectives, pay equity has yet to be fully realized because of the failure to reach a consensus in judging "worth." Although job evaluation systems and classification standards have been developed by many large employers to assess worth, they have not always been equitably applied. The Federal Government is just one example of how archaic standards are weighed against women.

Although the Federal Government has tried in the past to update its evaluation system, it has failed to make the necessary reforms to correct wage discrimination. In 1975, a new Factor Evaluation System (FES) was designed to replace the old narrative system. The new plan is based on nine factors (knowledge required by the position, supervisory control, guidelines, complexity, scope and effect, personal contact, purpose of contacts, physical demands, and work environment). Each is assigned a specific range of points. The factors are subdivided into levels which determine the total points a job may receive based upon the position description. When the points are tallied, they are matched to a conversion table that determines the grade based on the total number of points.

The Office of Personnel Management claims that the FES is a bias-free, quantitive evaluation system even though it has continually failed to assess objectively the value of worth of most female-dominated jobs. The current system still relies on outmoded value judgments and standards. Because the standards used are not continuously revised, they frequently fail to account for the ability needed to use the developing technological resources essential in many professions (i.e., data processing knowledge and word processing skills). The factors applied to job descriptions also tend to be weighed against or fail to account for traditionally female skills because they do not recognize the value of such skills.

Pay equity does not exist in the Federal workforce. While limited remedies are available to combat wage inequity or discrimination once they have occurred, the root of the problem remains unchanged. In spite of the equal pay provision in Title 5, U.S. Code, the structure of pay and classification standards precludes pay equity. Biased societal values continue to appear in the grading system and sex-role stereotyping influences the process of assigning particular jobs. Thus, jobs held primarily by women and minorities are undervalued and low paying. To add insult to injury, the mechanics of the system (such as career progression) prevent upward mobility out of gender-dominated jobs.

A thorough review of the wage setting system to identify discriminatory practices is essential. If the Federal Government is to successfully eliminate sex- and race-biased job evaluations, these

biases must first be identified and measured. S. 552 takes the first step by proposing two methods of analyzing wage disparities: through economic analysis and through a job content study.

The economic analysis provided by the bill isolates variables that influence wage-setting and determines how they can affect wage discrepancies. Such a study would consider not only the 'human capital' (i.e. the employee's characteristics) but also the job requirements and the environment in which the work is performed. While valuable information could be provided through such an empirical analysis, the pay equity study would not be complete.

Therefore, a study to measure the actual worth of a job is necessary to round out any pay survey. The legislation's job content analysis would do just that. This approach considers the characteristics of an employee's position and places a value on the job he or she performs. The FES system is an example of a job evaluation system; however, it is an example of how not to conduct this type of analysis. As I noted earlier, the FES has failed to eliminate the inherent biases of the former system and merely transferred them to the new factors. Thus, the weight or value given to each job skill did not change and the biases were perpetuated. But a more objectively designed job content analysis would help identify the subjective value assignments and determine whether or not they have been partially responsible for the wage gap.

Just as important as the types of analysis for the study is the composition of the board overseeing the study. S. 552 calls for the creation of an eleven-member, bipartisan "Commission on Equitable Pay Practices," which would be responsible for conducting the study. We are especially pleased with the provision calling for the appointment of three employee representatives to the board. This will ensure that employees' concerns are adequately addressed. The Commission would hire an independent consultant to perform the study. Upon completion of the study, the Commission would submit its findings, conclusions, comments and recommendations regarding any necessary legislative and/or administrative changes, along with the consultant's study, to the President and Congress. The Commission would not make any recommendations which involve a reduction in any rate of pay or grade. In addition, no changes to the current pay system would be made without legislative approval.

As the largest employer in the nation, the Federal Government has an obligation to erase all vestiges of discrimination against women and minorities. Already, forty-six states and several corporations have taken some action to address the issue of pay equity. There is simply no reason for Congress to delay the study of the Federal pay system any longer. We commend the subcommittee for its attention to the issue, and we look forward to working with you to ensure passage of S. 552.

That concludes my statement. I will be happy to answer any questions.

AMERICAN NURSES' ASSOCIATION

WASHINGTON, D.C.

TESTIMONY

of the

AMERICAN NURSES' ASSOCIATION

on

S. 552

THE FEDERAL EMPLOYEE COMPENSATION EQUITY ACT

before the

Subcommittee on Federal Services,

Post Office and Civil Service

Committee on Governmental Affairs

U.S. Senate

Presented by

Barbara Curtis, R.N.,

Member

Board of Directors

American Nurses' Association

APRIL 22, 1987

1101 14th STREET, N.W., SUITE 200, WASHINGTON, D.C. 20005 — 202-789-1800

Mr. Chairman, and members of the Committee, the American Nurses' Association (ANA) appreciates the opportunity to address you today and thanks you for holding this hearing on what we consider a very important bill, S. 552, the Federal Employee Compensation Equity Act, introduced by Senator Daniel Evans (R-WA) and Senator Alan Cranston (D-CA).

I am Barbara Curtis from Illinois. I am a registered nurse and a member of the Board of Directors of the American Nurses' Association. I am proud to be here today representing my profession.

I am representing not only the American Nurses's Association, but also the Association of Operating Room Nurses (AORN) with 36,000 members and the Association of Critical Care Nurses (ACCN) representing 50,000 members. There is unanimity in the nursing profession about the need for fair and equitable wages for female-dominated job categories, of which nursing is a prime example.

The American Nurses' Association is the largest nursing organization in the country, representing 200,000 professional registered nurses in the United States. ANA has constituent state nurses' association in the fifty states, District of Columbia, Guam and the Virgin Islands. For more than fifty years, ANA has fought to secure salaries for the profession that adequately reflect the value of work performed by nurses. The association supports economic equality for all, and is working to make pay equity for women and minorities a national priority. You will find attached to our testimony evidence of our on-going

activity and concern, an ANA publication released at the end of 1986 entitled Pay Equity: What It Means and How It Affects Nurses.

ANA has been a member of the National Committee on Pay Equity (NCPE) almost since its inception. We currently are a member of the Board of Directors and co-chair the Legislative Taskforce of NCPE. Our state associations have pursued pay equity for their members through a variety of means, including collective bargaining, legislative action for public employees, and where necessary, litigation. Pay equity is a top priority for my own state association, the Illinois Nurses' Association.

We appear today to express our support for S. 552, the Federal Employee Compensation Equity Act, introduced by Senators Daniel Evans and Alan Cranston. Our testimony will present the reasons for our support of a study of the federal job classification and wage setting system. We will review the historic status of nursing and nursing salaries and the long term effect; ANA's involvement in the issue; and the situations of nurses working for the federal government at the National Institutes of Health, ir the Indian Health Service, and elsewhere in the federal government.

Many cite nursing as the stereotypical female dominated profession. It is 97% female, and routinely thought of as a helping, feminine profession. Nursing has always been "women's work." The very term "nursing" carries a double meaning, referring to both the tending of the ill and the breast feeding of infants. In very early times, the nurse was also a domestic servant, working as maid and cook while caring for the sick. Somewhat later, much nursing, especially for the upper classes, was done by religious orders. Modern nursing has continued to be the prototypical women's profession; its founders, leaders, and

been de facto sex-segregated. As a result, the nursing profession is affected profoundly by society's concepts of the position and value of women and their labor.

Historically, nursing has been viewed alternately as degrading work of low status, or heroic martyrdom manifesting selfless dedication to the relief of human suffering. In either case, those functioning as nurses worked for little or no pay. Hospital nursing was performed primarily by young apprentice students, living on the grounds of the institution, working long shifts, and receiving little or no pay. Thus, as the foundations of modern nursing were being formed, a pattern of low wages was created.

In recent decades, nursing services have become quite sophisticated. The vast majority of nurses work in hospitals, where they serve patients whose medical needs have become progressively more complex. They work rotating shifts to provide twenty four hour care, utilizing increasingly complicated technological systems. Other nurses provide key services in the public health systems, in occupational settings, and in private homes. Nurse practitioners have statutorily expanded the boundaries of traditional nursing practice by engaging in nursing diagnosis, prescription, and treatment, functions previously reserved by law exclusively for physicians. Nurse practitioners often perform specialized services, such as pediatrics, midwifery, and family or geriatric practice. In academics and elsewhere, nurses today engage in teaching, writing and research.

Despite increased sophistication and work requirements, the economic legacy of the past remains. Nurses' salaries are substantially less than those of members of male-dominated professions. For example, in 1977, the average yearly

wage of a registered nurse (RN) in a full time position was $12,938, which was only 70% of the Bureau of Labor Standards estimate of a middle income budget for a family of four. In 1984, the average annual salary of an RN had risen to only approximately $ 21,000. Poor economic conditions, inflexible work schedules, and high pressure patient responsibility have combined to produce mounting frustration and instability in the nursing work force. Turnover is high, with some nurses withdrawing from the profession. Despite a high level of work force participation by RNs, there remains a shortage of qualified RNs. These problems, in turn, block effective and efficient operation of health-care institutions and programs, both in and out of the government.

Past history has left its imprint on nursing pay. In the 1920s, a study indicated that 80% of private duty nurses worked a twelve hour day and earned forty-nine cents an hour, slightly less than a charwoman. Shortages of nurses in the 1940s prompted a nationwide survey that demonstrated that nurses were paid less, worked longer hours, and had fewer benefits than most workers in industry or comparable occupational groupings. A generation later, in 1962, the average salary of a nurse in a hospital was $3,900, $830 less than the average for factory workers, and $131 less than the average for classroom teachers.

Regrettably, the present situation is not appreciably different. Salaries for nurses do not begin to compare favorably with those of similar professions which are male-dominated. In fact, current wage rates for RNs compare unfavorably with earnings of male-dominated trade groups, such as carpenters, printers, bus drivers, and police officers. This disparity persists despite the fact that educational requirements for nurses are considerably higher. Nursing administrators are likewise poorly paid. Nursing directors, invariably RNs, are

responsible for services that consume a major portion of the hospital budget and directly affect each patient's case. Despite this fact, salaries for nursing directors compare unfavorably to managers in private industry with corresponding levels of responsibility.

Not surprisingly, nurses in the public sector fare no better. Monthly salaries for nurses employed by the city of Denver, for example, were $929, while starting salaries for a sign painter, a tree trimmer, and a parking meter repairman were $1,245, $1,040, and $994 respectively. A 1980 job evaluation study of the San Jose, California work force rated the skill, effort, and responsibility of a city nurse equal to that of an electrical foreman. The nurse, however, earned $329 less per month than an electrical foreman, and less than a senior painter, a male position with much fewer job evaluation points. A 1981 job evaluation study in Minnesota rated the work of registered nurses equal to that of male vocational education field instructors. Yet the nurses were actually paid $537 less each month than the field instructors. A 1983 job evaluation study in Illinois found that two job classifications for nurses were underpaid by as much as $6,234 and $7,322 annually in comparison to male jobs with similar demands.

The economic conditions of nurses appear even more dramatic when other aspects of the work are considered. Today, most RNs face "salary compression" where in addition to low entrance pay, they quickly reach their salary limit. There is little potential for higher income to reflect experience and advanced training. Promotional opportunities are rare, and few hospitals have career development programs. Moreover, nurses work rotating shifts, and often confront job hazards including heavy physical labor, physically abusive patients, infectious diseases, and dangerous substances. Chemicals used in a wide range of

hospital areas are known to be carcinogenic, mutagenic, and embryo-lethal. RNs are also expected to assume important administrative coordinating functions, taking responsibility for the work of aides, technicians, and other health workers. Despite all this, nurses face a general lack of respect for them and for their profession by doctors and hospital administrators. The general public, however, holds nurses in high regard.

The problems of American nurses are not unique, and must be considered in context. The overall economic position of working women remains as unfavorable as it was before the passage of the Equal Pay Act and the Civil Rights Act twenty years ago. The major measurements of that economic plight are the concentration of women in a few occupations, and the dramatic income disparity between male and female workers.

Women are overwhelmingly concentrated in "traditional" women's jobs in the clerical and service occupations. Such occupational segregation is more pronounced by sex than by race. While individual choice accounts for a portion of this distribution of jobs, societal expectations and employer and union choices undoubtedly affect this result.

There is a dramatic disparity in the earnings of America men and women. American women on an average earn 64 cents for each dollar men earning, returning them to where they were in 1955 after having earned just 57 cents to 59 cents in the late 1970's. In nursing, male nurses earn $1.17 for every $1.00 earned by women in the profession. Furthermore, greater percentages of women in an occupation generally means lower pay. We are seeing proof of this phenomena today as the average salaries in law and medicine drop in almost direct proportion to the increase in the number of women in those professions.

ANA supports S. 552 for several reasons:

- o We believe that it is time for the federal government, as an employer, to review its job classification and wage setting system. In the sixty-three years since the general schedule was first created, the numbers and types of jobs and the make-up of the federal work force have changed drastically. Admirably, there are far more women and minorities as federal employees than anyone would have imagined. They also fill jobs that would have been unimaginable in 1923; jobs like computer programmer, nuclear physicist, and cardiac intensive care nurse. As these job categories were added to the general schedule, their classifications and wages carried with them and perpetuated the prejudices of the times. Some of those prejudices and discriminatory practices became institutionalized and remain in the system today.
- o It is simply good management for the federal government to conduct a study of its job and wage classification system. A growing number of employers, in both the private and public sector, are doing studies of their work forces to determine if there is race or sex based discrimination in their own job classification system. An article in an April 1986 issue of Business Week listed a number of private corporations including Chase Manhattan Bank, Motorola, General Electric, Bank of America, and Levi- Strauss which have done their own studies and revised their evaluation systems. Other private employers have done studies in the year since that article

appeared . Forty-six of the fifty states and the District of Columbia have done or are doing some type of study. Numerous counties and municipalities are doing or have completed studies. In addition, the National Governors' Association passed unanimously a resolution supporting pay equity. (A copy resolution is attached.)

- o Finally, ANA supports S. 552 because it believes that pay inequities are costing our federal government money because of employee turnover, lost productivity, recruiting costs and competitiveness. The segment of the federal work force we know best is obviously nursing and the remainder of our testimony will deal with nurses employed by the federal government.

Nurses at NIH

On August 22, 1986, The Washington Post carried an article entitled "Lacking Qualified Nurses, NIH is Closing Beds". The article painted a bleak picture of the results of the shortage of nurses at the National Institutes of Health (NIH). At that time, NIH had closed 19 beds in the clinical cancer ward because it was unable to attract and retain enough qualified nurses at government pay rates to staff the wards. At one point, the hospital had seventy vacancies and currently has thirty. The nursing shortage has slowed research in one institute by 30 percent, according to Dr. Mark Hallett, Clinical Director of the Institute for Neurological and Communicative Disorders and Stroke.

NIH is offering beginning nurses $18,000 salary each year, when the going rate in this region is $23,000 to $24,000. The clinical center is trying to hire head nurses at $31,500 while the going rate is $35,000 to $38,000.

At the same time, NIH is spending $10,000 to recruit, hire, and orient each new nurse. Its overtime expenses were $464,000 by August 1, 1986, a 26% increase over 1985.

Beginning nurses are hired as GS-7, the same grade as an experienced correction officer or a high level secretary, despite a major difference in the educational requirements.

Experienced nurses are classified as GS-9s, the same category as junior contract officers or experienced customs inspectors. Most cancer and intensive care nurses become GS-10s because of the level of experience and responsibility required to manage the experimental treatments at NIH. Janice Feldman, the Director of Nursing at NIH, has the authority to hire intensive care nurses as GS-9s and ask them to work a year in order to be promoted. Unfortunately, even with a promotion to GS-10, nurses at NIH are earning less than nurses in the private sector, and far less than men with comparable education, training, and responsibility earn in jobs inside and outside of the government.

Indian Health Service

The inability of the Indian Health Service (IHS) to recruit and retain nurses provides another clear example of inequitable job classification and salaries, and the long term cost of those inequities.

Nurses working for IHS are in GS-4,5,7, and 9 grade levels. The vacancy rate in the Indian Health Service Nursing Corps is approximately 17% and the turnover rate is 39%. Computations show that the replacement costs for nursing staff who have quit is almost $2 million per year.

The sad fact is that, although nurses nationwide are being undervalued and underpaid, the IHS nurse, like the NIH nurse, earns less than the non-federal nurse. More than half of IHS job offers are turned down by applicants. The quit for pay rate is 22%, which is probably a conservative figure since many employees do not state a reason for resignation.

IHS's inability to recruit and retain qualified RNs has had a high cost to the quality of the health of the American Indian and Native Alaskan population. A number of IHS hospitals have been closed temporarily, or partially, or have had to hire nurses from a temporary employment agency. (Nurses working for IHS through a temporary agency receive much higher wages than do IHS nurses and cost the government a great deal more.) At least fourteen IHS hospitals in Nevada, North and South Dakota, Minnesota, New Mexico, Montana, and Oklahoma do not have enough permanent professional nurses to pass Medicare accreditation.

The following are some specific examples of what this lack of staff has meant for various IHS areas:

Nashville- In one year, the vacancy rate almost doubled. The hiring rate(40%) and the staffing success rate (46%) in 1983 were noticeably inadequate. The quit for pay rate was 13%

Albuquerque- The vacancy rate is approximately 15%, the hiring rate is 71%,

the quit for pay rate is 11%.

Alaska- In 1983 Alaska managed to reduce their vacancy rate to 9%, but the hiring rate was only 23%, meaning that most job offers are turned down by the applicants. The turnover rate is 43%, and the quit for pay rate is officially 10%, but may actually be much higher since many nurses leave Alaska without a job but immediately get one when they return to the "lower 48" states. Alaska's current special pay rate is not sufficient.

It is possible to go on with depressing statistics about low wages and undervaluing of nurse in the federal wage classification system, for there are nurses in a wide variety of agencies and roles in the federal government. They include, among others, the Public Health Service, and the Division of Federal Employee Occupational Health, and federal hospitals. As in the private sector, the statistics are staggering, and with the growing shortage of nurses, highly disturbing.

It would be possible after reading our testimony for the Committee to conclude that the Federal government need only to raise the wages of those nurse working for it. That is simply not true. These facts are only part of the systematic devaluation of women's and minority wages in the federal government's job and wage classification system. We have presented data on nurses, but the same shameful pattern would appear to be true of almost all female-dominated job categories in the General Schedule. We have presented this testimony as one part of a very disturbing picture and to encourage the Congress of the United States to conduct a study to examine the entire system.

The wage disparity affects more than the women employed by the federal government at the time they are working for the federal government; it also

affects their families. Women, like men, work because they need to, because someone has to pay rent, and buy food and clothing. Most women work because they are either part of a two-earner family that could not survive without the two incomes, or because they are single heads of households. What women earn while they are working has a direct relationship to what women receive as pensions and as Social Security when they retire. Older women in this country live on retirement incomes that are approximately 60% of what men have, perpetuating the wage gap to the end of their lives.

Clearly the only way to determine exactly what the wage disparity is and how much of it might be attributable to sex or race-based discrimination is to carry out a study of the type proposed by Senators Evans and Cranston in S.552. The results of that study will enable the federal government to make the kind of educated management decisions that characterize the best of American business.

The study is solely that- an advisory study. It does not commit Congress and the Federal government to any future action. It does not create any litigation rights and, in fact, does not create any new rights because the General Schedule has compared dissimilar jobs from its inception. With a cost of 50 to 75 cents per federal employee, it has a small price tag for the federal government.

In closing, we commend the subcommittee for holding this hearing, and providing a much needed airing of a very important subject. We urge you to act on this legislation as soon as possible.

STATEMENT OF

ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

TO THE

SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE AND CIVIL SERVICE
COMMITTEE ON GOVERNMENTAL AFFAIRS

HONORABLE DAVID PRYOR
CHAIRMAN

THE FEDERAL EMPLOYEE COMPENSATION EQUITY ACT OF 1987

U.S. SENATE
WASHINGTON

APRIL 22, 1987

1730 K Street, N.W. • Suite 1101 • Washington, D.C. 20006 • (202) 785-4411

Thank You, Mr. Chairman:

I am Robert M. Tobias, President of the National Treasury Employees Union. I am pleased to be here today to testify in support of S.552, the Federal Employee Compensation Equity Act of 1987, which authorizes a study of the Federal pay system to determine if sex, race and ethnicity are factors in setting federal pay.

As the exclusive representative of 120,000 employees in the federal government, our union has long been committed to the fundamental principal of pay equity. Simply stated, pay equity means that employees should receive the same pay for work that requires comparable educational preparation, experience, skill and responsibility. Pay equity requires that pay be based on the job performed, not on gender, race or ethnicity of the employee.

As increasing numbers of women in the United States enter the work force, pay equity is becoming an issue of paramount importance for working women. Over 55 percent of women 16 years and older are now in the workforce, and the vast majority of these women are working out of financial necessity. Yet recent Census Bureau statistics indicate that women working full-time year-round earn 64 percent as much as their male

counterparts. This wage gap has had a devasting impact on the economic security of women and their families. One out of every three families maintained by a woman is poor, and elderly women must often struggle to survive on meager pensions as a result of low lifetime earnings.

The earnings gap is even greater for women of color. In 1985, Black women earned only 56 percent of the salary earned by white men, and Hispanic women earned 53 percent. A report issued in February 1987 on a study sponsored by the National Committee on Pay Equity vividly illustrates that women of color are concentrated in occupations such as private household cleaners, sewing machine operators and child care workers, which are among the most poorly paid positions in the workforce. The study also shows that these disparities in pay cannot be explained away by differences in education and experience. An analysis of 1980 Census data indicates that when these factors are taken into account, a significant wage gap remains.

Women and minorities cannot and should not continue to bear the cost of discriminatory wage setting practices. Pay equity offers a solution to that problem.

The principle of pay equity simply requires that pay reflect the "worth" of a job to the employer. It is hardly a radical and dangerous "doctrine", as its opponents portray it.

According to the General Accounting Office (GAO), 75 percent of large public and private sector organizations in the United States use a job evaluation procedure to assess the value of positions and set pay rates.

With the federal government, the position classification system has used a job evaluation procedure for decades, based on the premise that the duties and responsibilities of a job should determine pay levels. In the federal classification scheme, each position is evaluated using criteria such as skill, knowledge required and working conditions, and quantitative measures are used to determine the value, and corresponding pay, of the position.

However, the federal classification system is fundamentally flawed, because the factor evaluation system (FES) used to assign weights to various job tasks is based on classification standards that have been in existence for 62 years. Consequently, the system reflects much of the bias concerning female and minority job roles that permeated society 62 years ago.

In 1923, the year the federal job classification system was established, Warren G. Harding was President. Women had won the right to vote only a few years earlier. Racial segregration and discrimination were openly and prevalently practiced around the country. Federal jobs were advertised under the banners of "Help Wanted-Male" or "Help Wanted-Female," and women were officially barred from certain jobs altogether.

The federal workforce has changed since 1923, and employment discrimination based on gender and race is now illegal. Yet enormous wage disparities remain between men and women and minorities. A 1985 GAO report, "Options for Conducting a Pay Equity Study of the Federal Pay and Classification Systems", found that federally employed women earned only 63¢ for each dollar earned by a man, and earned an average salary of $18,810, compared to $27,720 earned by a man. Black and Hispanic women averaged even less.

Despite evidence of extensive occupational segregation and large disparities in pay, the federal pay and classification system has never been thoroughly reviewed for possible wage discrimination. Isn't it time that we examine the federal pay system, expose any bias which may exist and eliminate race and sex discrimination in the federal government once and for all?

The legislation which is the topic of today's hearing, S. 552, authorizes just such a study of the federal pay system to determine whether sex, race or ethnicity are factors in determining federal pay rates. The bill creates a bipartisan commission which is to select an independent consultant to conduct the study, and report to Congress on the consultant's finndings. The Commission will also make recommendations on how to eliminate any discrimination which may be identified by the study.

NTEU strongly supports S. 552, which offers a balanced and workable approach for reviewing the federal pay system and detecting discriminatory pay practices which may be imbedded in the system. I would like to highlight three important features of this legislation.

First, S. 552 requires that the pay study include both a job content analysis and economic analysis. We agree that both methods of analysis should be incorporated in the study to ensure that the results of the study are as objective as possible. A job content analysis is based on the use of objective criteria to assess the value of occupations , and could be used to detect any significant undervaluation of a particular job or skill which is built into the federal classification system. An economic analysis of the federal pay system will help to determine how much of the wage gap among federal workers can be explained by factors other than discrimination, such as education, experience, training and other characteristics of individual employees. Previous studies of the federal work force have found that White men earn 22 to 27 percent more than all women after such individual characteristics are taken into account. This type of analysis will serve to clarify the extent of the pay equity problem and increase confidence in the results of the study.

Second, S. 552 creates a bipartisan commission composed of representatives of the President, the Congress and federal

employee unions which will guide the study and make recommendations to Congress based on the study's results. This approach is crucial to assure that the results of the study are credible and acceptable to federal workers, federal managers and the American public. A commission which encompasses a broad range of perspectives and concerns will be able to make reasonably fair and objective decisions concerning the goals of the study, the evaluation of jobs and skills, the selection of a competent and independent consultant to conduct the study, and recommendations for corrective action. We would further recommend that job incumbents be involved in the job evaluation process, because job descriptions in the federal government are frequently dated and unreliable, and direct participation will improve employee understanding and support of the pay equity study.

Third, the study will include an analysis of occupations in which disproportionate numbers of a race or ethnic group are employed, as well as occupation in which either sex predominates. Although pay equity studies have focused primarily on wage differences between men and women, such studies are beginning to look at racial and ethnic discrimination as well. Those studies which have examined race-based wage discrimination in New York, Washington State and Los Angeles County have found compelling evidence that race and ethnicity are factors in setting pay. This aspect of the study is particularly important in view of the fact that Black

and Hispanic women are highly segregated into many of the lowest paid occupations in the workforce, and stand to gain the most from the elimination of discriminatory wage practices.

Before closing, there is one other observation we would like to make. In the private sector, women workers represented by unions have won better pay and employment opportunities through collective bargaining. Collective bargaining has enabled women in the U.S. Postal Service to achieve pay comparability as well. This critical avenue for women to upgrade their jobs and gain better wages is foreclosed in most of the federal government, because all federal unions do not have the right to negotiate over wages and job classification. By extending to all federal unions the right to bargain over pay and classification, Congress would remove a major obstacle to attaining pay equity.

We are pleased that Congress is taking the initiative in acheiving pay equity in the federal government, and we commend you, Senator Pryor, for conducting hearings on this vital issue.

The federal government should be in the forefront of the struggle to end wage discrimination against women and minorities. By eliminating discrimination in the federal pay and classification system, Congress can set an example for employers in the private sector to follow.

Thank you, Mr. Chairman. I would be happy to answer any questions you might have.

STATEMENT
on
COMPARABLE WORTH
before the
SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE
of the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS COMMITTEE
for the
U.S. CHAMBER OF COMMERCE
by
Bobbi Thompson
April 22, 1987

I. STATEMENT OF INTEREST

I am Bobbi Thompson, President, Aviation Sales in Miamisburg, Ohio. I also am on the Board of Trustees of the Dayton Area Chamber of Commerce and the Board of Directors of the South Metro Chamber of Commerce and the Board of the Ohio Chamber's Small Business Council. I am an honorary member of the National Federation of Independent Business, was a delegate from Ohio to the 1986 White House Conference on Small Business and am the only woman who has ever served on the Board of the National Air Transport Association. As a woman business owner, I am delighted to testify before your Subcommittee on what many have called a "woman's issue." Accompanying me today is Virginia B. Lamp, Labor Relations Attorney for the U.S. Chamber of Commerce.

Comparable worth is a theory that holds that jobs have intrinsic, measurable values and dictates that salaries be based solely on those determined values, rather than on market considerations.

The Chamber disagrees: all jobs do not have fixed, intrinsic values, and all jobs cannot be compared and ranked by the same criteria -- particularly when market factors are excluded -- into a single classification system.

Comparable worth advocates argue that disparities in income between men and women and the heavy concentration of women in certain occupations are

proof of sex discrimination. While there is no question that a wage gap exists between male and female workers, the cause of this wage gap and if, how, and by whom the disparity should be addressed are highly complex issues in need of a complete and thoughtful examination. Absent such a thorough examination, comparable worth legislation might be enacted which will have major negative ramifications for the government, taxpayers, the business community and employees -- male and female employees alike.

The fundamental issues underlying S. 552 are the following:

- whether and to what extent discrimination is an identifiable cause of the wage gap;
- whether and to what extent women are making progress in the federal government and elsewhere;
- whether existing law -- Title VII of the Civil Rights Act of 1964 and The Equal Pay Act — is addressing adequately and is capable of addressing adequately discrimination occurring in the work force;
- whether developing a method of setting wages and comparing the worth of substantially different jobs without taking market factors into account is appropriate;
- whether, in fact, developing and implementing such a wage-setting plan in an equitable and workable manner is possible; and
- whether the social and economic costs of comparable worth justify its adoption to eliminate or to close the wage gap.

As a proposed remedy to the federal wage gap, comparable worth is ill-conceived, unworkable, expensive and, in all likelihood, counterproductive in the long run to the multiple interests affected, including the interests of female workers. Comparable worth is based on the following:

- a fundamental misunderstanding of the role of markets and of wages in our economy;
- a failure to appreciate the extensive legal remedies for gender discrimination which currently exists;

- a near-sightedness with regard to the record rates at which women -- particularly young women -- are entering into nontraditional employment fields.

Additionally, comparable worth legislation would embrace a radical new theory of what constitutes "discrimination."

The Chamber wishes to call the following to the attention of this Subcommittee:

- Except for gross wage gap statistics, evidence does not exist of widespread systemic, gender discrimination in the federal system which cannot be remedied by current law;
- Based on available evidence, specifically attributing the portion of the wage gap allegedly caused by gender discrimination is impossible;
- No evidence exists that altering the definition of discrimination beneficially will address the wage gap or occupational clustering of women;
- Evidence that our economy is growing, adapting to accommodate women in the labor force and providing an efficient manner of wage setting does exist;
- Wage determination processes which do not consider market supply and demand have not been developed adequately;
- Job evaluations are inherently subjective and should not be used to compare different jobs without help from the market;
- Evidence exists that women have made tremendous progress — particularly younger women -- in entering into nontraditional fields and obtaining higher paying jobs.

II. S. 552 IS MORE THAN "A STUDY" AND REPRESENTS A SIGNIFICANT CHANGE IN THE LAW

Comparable worth proponents, particularly those advocating that the federal government must conduct a "study," often tell us that they are not asking for a new law. The Chamber must respectfully and firmly disagree. As

legislation is being discussed (and as S. 552 implies), they embrace a definition of discrimination that clashes with existing law and precedent.[1/]

Equal opportunity is the law. Equal pay for equal work is the law. And nondiscrimination is the law. But comparable worth is not the law. Any bill which explicitly or implicitly seeks to define or identify discrimination on the basis of the comparative value of different jobs represents a significant change in the law.

It is this issue — comparable worth as a tool for measuring discrimination -- which has raised employer concerns about S. 552. The bill is based squarely on the premise that a comparable worth study can uncover discrimination. This faulty premise has been rejected by each federal appellate court which has considered it, including the Seventh Circuit's decision in American Nurses' Association v. State of Illinois, 40 FEP Cases 244 (1987).

The heart of the Illinois lawsuit was a voluminous comparable worth study which purported to measure objectively the relative value of different jobs on the basis of skill, effort, responsibility and working conditions. The Seventh Circuit Court of Appeals, however, ruled that such a study does not form the basis of a discrimination claim. The Court held that the mere fact that a pay system is not based on the comparable worth theory does not make that system discriminatory. Thus, plaintiffs' comparable worth claims were rejected. What the Court did permit, however, was for the plaintiffs to go forward with their allegation that the state deliberately maintained a sex-segregated work force. The Court noted that, if proven, an allegation of intentional segregation is clearly within the prohibition of our equal employment opportunity laws.

1/ Similarly, S. 5 seeks to "reaffirm" an interpretation of the law which was specifically rejected by Congress in 1962 and which has since been rejected by the courts. As the legislative history of the Equal Pay Act demonstrates, Congress considered, debated, and rejected a comparability standard as a basis for finding sex discrimination. See discussion of legislative history in ANA v. State of Illinois, 37 FEP Cases 705, 706-707 (E.D. Ill. 1985).

The Seventh Circuit's decision builds upon the reasoning of the Ninth Circuit in the famous Washington State comparable worth case -- AFSCME v. State of Washington, 770 F. 2d 1401 (9th Cir. 1985). Together, these decisions raise significant questions about the utility of the study proposed in S. 552.

S. 552 carefully avoids the use of the term comparable worth. Nonetheless, it proposes to determine through job evaluation whether the federal government is in compliance with existing law. The evaluation process would assign points to different jobs to determine which jobs are equivalent in total value. This is precisely the method used in the Illinois study and in the earlier comparable worth study in Washington State. In both instances, federal courts of appeals ultimately concluded that, while such job evaluation studies may serve a variety of purposes, they do not tell us whether a particular pay system is in accord with federal law. As the Seventh Circuit noted, when the state officials in Illinois read the comparable worth study, they "knew that the state's compensation system might not be consistent with the principles of comparable worth," but that did not mean that the state was guilty of discriminatory practices under Title VII, which does not require pay systems to be based on "comparable worth."

Nonetheless, the pending legislation is being presented as a simple study which will help to identify whether there are problems which need to be corrected. This gives the erroneous impression that S. 552 itself does not involve a basic policy question and that the substantive decision on this issue can be deferred until after we have the results of the study. As in Illinois, however, once we read the study required by S. 552, we might know that the existing pay system is not consistent with one consultant's assessment of comparable worth, but we will not know any more than we do now about whether the existing system is discriminatory.

In fairness, it must be noted that S. 552 and its predecessors were drafted and introduced long before the appellate court decisions in Illinois and Washington. The idea that a job evaluation study can reveal whether an

employer is illegally discriminating was popularized in 1983 by the trial court decision in the Washington State case. That decision was reversed on appeal in September, 1985, but in the interim it served to promote many misconceptions about the true nature of job evaluation studies.

For example, the Illinois nurses' case itself was filed in the wake of publicity generated by the ill-fated trial court decision in Washington. In filing their discrimination suit, the Illinois plaintiffs attached a comparable worth study to their complaint and announced that there were striking similarities between their claims and those in the Washington State trial.

The pending legislation calling for a federal comparable worth study is similarly a product of misconceptions about the legitimate uses and limitations of job evaluation studies. The concerted push for a federal comparable worth study which followed the 1983 Washington State trial was driven primarily by the belief that a failure to implement a comparable worth study at the federal level would be the equivalent of discrimination. In 1984, with the decision by the Washington State trial court only several months old, the House of Representatives approved a federal comparable worth study by a margin of more than 400 votes. In 1985, however, when the federal bill was brought to the House floor following the reversal of the Washington State decision, the margin was less than 100 votes.

In Congress and in the courts, as the concept of comparable worth receives more scrutiny, it becomes apparent that the theory is no magic elixir. A comparable worth job evaluation study can neither prove illegal discrimination nor serve as a means to override legitimate market forces, such as supply and demand. The Illinois nurses' case is simply one of many appellate court decisions since 1984 to recognize that comparable worth is not the equivalent of equal employment opportunity. In each instance, when the court was presented with the practical impossibility of determining discrimination on the basis of subjective assessments of the value of

different jobs, the court ruled that a comparable worth study tells us little or nothing about employment discrimination (See Spaulding v. University of Washington, 740 F. 2d 686 (9th Cir. 1984).

III. COMMENTS ON THE GENERAL ACCOUNTING OFFICE (GAO) REPORT ON OPTIONS FOR CONDUCTING A FEDERAL COMPARABLE WORTH STUDY

In its report submitted to Congress on March 1, 1985, GAO observed that pay equity is a very complex issue and that if a study is to be done, important policy decisions must be made.

In its report, GAO referenced Congress to two other GAO reports which contain pertinent data and information relating to this Subcommittee's interest in equity for women in the federal government. In one of those reports, GAO provides an overview of the extensive and on-going methods by which all federal wages are classified and set. That report provides ample evidence that:

1. the federal government already is and has been conducting extensive job evaluations;

2. the value or worth of particular positions and individuals within positions are being continually assessed; and

3. there is no evidence that gender discrimination plays a part in that on-going process.

In the other report, GAO presented Congress with data on the number and percent of male and female employees within the federal government. Contained in Appendix V of that report is a letter from the Office of Personnel Management (OPM) to GAO which deserves to be quoted:

> Attached is the additional trend information on the employment of women . . . Not only has there been increased representation of women across the board, but more important, there has been a significant upward shift in the distribution of women by grade groups. The increased representation of women in traditionally male-dominated occupations, particularly in professional

occupations, has also been strong and sustained. Engineering, science, medicine, management, and administration have all experienced advances in the employment of women. The numerical increases are very positive, but what is most noteworthy is the rate of growth -- several hundred percent in some instances. (emphasis added)

Documenting the progress of women within the federal labor force, these statistics should be welcome news to those concerned about occupational clustering of women.

The following observations concerning the 1985 GAO report must be made:

1. GAO made it clear from the outset that what is not clear is why the wage gap exists and whether discrimination plays a part (pg. i).

2. GAO recognized that job evaluations are inherently subjective (pg. 30). (See separate GAO response to Rep. Dannemeyer.)

3. GAO neglected to mention that Congress in 1962 specifically debated and rejected comparability as the standard for the Equal Pay Act.

4. GAO reminded Congress of the fact that on-going job evaluations have been/are being used within the federal government (pg. 6).

5. GAO recognized that market factors play a role in most job evaluation systems (pg. 27).

6. GAO does not attempt to answer such questions as: What would be the best compensation system for the federal government? Is the current job evaluation and wage determination process used by the federal government bad, unfair or discriminatory? What are the fundamental elements of a sound compensation system? How would a comparable worth requirement work on a day-to-day basis?

7. GAO's discussion of the wage gap between males and females neglected more recent literature, such as the Rand Corporation study (released in October 1984) and the variety of expert papers presented in 1984 to the U.S. Civil Rights Commission.

8. GAO recognized that major disadvantages to any "job content" study include the following:

   - the inability of job evaluations to measure the worth of various jobs (pg. 30).

- the inherent overlooking of explanations, other than discrimination, which may account for wage disparities between men and women (pg. 29-30).

- the necessary focusing on the value of jobs as opposed to the value of individual workers (pg. 47).

9. GAO touched on myriad practical problems which have yet to be discussed.

10. GAO recommended an objective steering committee (pg. 52). (emphasis added)

11. GAO, recognizing that a new definition of discrimination lies within the comparable worth controversy, distanced itself from the idea of such a study being in any way related to sex-based wage discrimination (pg. 10).

IV. RAMIFICATIONS OF COMPARABLE WORTH

Prior to endorsing the concept of comparable worth by calling for a "study" of federal employees, the Chamber urges Congress and this Subcommittee, in particular, to consider the comments being made by its proponents and consider the ramifications of such an action.

A. A New Definition of Discrimination

Winn Newmann, the attorney who represented AFSCME in the Washington State case, has testified that "many public and private employers model their wage practices on the federal government. Investigation of wage discrimination in the federal sector would be invaluable in the drive to eradicate wage discrimination throughout the nation."[2/] Just as the State of Washington generated an expensive lawsuit by conducting a comparable worth

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2/ Statement of Winn Newmann.

study, so would Congress be generating a lawsuit. One only has to look at the comments being made by proponents of this federal study:

> Now, if that study comes out that way (demonstrating wage differentials) and this body then does not do something to correct it and we know it is there, then we are guilty of intentional discrimination.3/

And, let there be no doubt about it, a precedent will be set for the private sector as a result of Congressional approval of this new definition of discrimination.

B. Cost of Comparable Worth in the Federal Government

The important issue is whether the comparable worth theory provides a practical, effective way of identifying discrimination and narrowing the average earnings gap. If it does not, comparable worth should be rejected even if the costs involved be minimal. In view of its limited efficacy, the excessive costs of implementation provide further reason to reject comparable worth.

Comparable worth proponents often will suggest that those who raise the cost arguments would condone discrimination because it is expensive to remedy. The U.S. Civil Rights Commission has addressed this issue:

> This is a specious argument. The costs must be examined precisely because they would be imposed in the name of nondiscrimination and civil rights even as the comparable worth concept leaves discrimination against women in employment largely unaddressed. This would amount to money spent on a purportedly anti-discrimination remedy which, instead, serves the political-socio-economic objectives of its advocates.4/

3/ Representative Patricia Schroeder (D-Co).

4/ Comparable Worth: An Analysis and Recommendation, a report of the U.S. Commission on Civil Rights, adopted April 11, 1985, by a vote 5-2, p. 58.

So, what is the wage gap in the federal government and how much would it cost to eliminate it? The GAO report gives us some useful statistics. On page nine of the report, it indicates the average wage for men and women and the number of men and women employees. Based on those figures alone, the Chamber estimates the cost to "eliminate the wage gap"[5/] in the federal government to be $6.6 billion, not including back pay liabilities and the subsidies which would be necessary on a yearly basis to maintain "pay equity."

C. Economic Consequences of Comparable Worth

Dr. George H. Hildebrand, an economist and professor at Cornell University, has spoken of the potential adverse economic and social consequences of comparable worth in the following manner:

> There are three ways by which a comparable worth policy will increase unemployment, and along with it, poverty and welfare dependency. First, as with the minimum wage, it will raise the price of low-productivity workers without improving their productivity. In consequences, employers will be induced to lay part of the group off to hold down the enforced rise in their costs. Unlike the minimum wage, comparable worth would affect many more workers because it is intended to reach much further into the labor market. Second, for the low-paid women working in the numerous small or even tiny firms, the imposed rise in labor costs will bring about either much bankruptcy or voluntary closure. Disemployment of these workers will follow. Third, in larger firms the imposed increase in labor costs will create an incentive to substitute capital and to revise plant or shop organization to replace low-paid women or alternatively, to raise hiring standards so that fewer workers of either sex who are more productive can replace them.
>
> In summary, economic theory tells us that if comparable worth is put into effect (1) unemployment of females also will rise, (2) unemployment of females also will rise, (sic) (3) the major

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5/ This appears to be the articulated goal of many proponents of legislation in the House and the Senate. For example, in her statement before a House subcommittee on March 28, 1985, Rep. Patricia Schroeder stated: " . . . on average, men working for the federal government earn $12,000 per year more than women. We need to find out why this pay disparity exists, and then fix it."

victims will be the poorest female workers, (4) welfare dependency will grow, (5) female youngsters will be large losers of job opportunities, and (6) there will be some withdrawal of discouraged women workers from the labor force, precisely because official policy, in the purported service of a peculiar concept of social justice, will have destroyed their jobs for them, despite their own efforts to be productive and self-supporting citizens.6/

D. Comparable Worth Confers Unrealistic Status to Job Evaluations and Deters Employers from Doing Any Job Evaluation

Since we know that each job does not have a measurable, economic worth which can be determined logically and compared objectively to other different jobs, this "study" would be asked to do the impossible, yet declared to have the force of law. If Congress should pass such a study and then use that study to adjust wage scales for traditionally female jobs, the likely result will be to exacerbate the current dilemma facing employers as to whether they should conduct a job evaluation in the first place. Employers naturally would shy away from a process which inevitably would place them in court.

E. Distorts Pay Equity Concept

Since the legislation as written prohibits decreasing salaries for any employees' wages which the study determines have been traditionally "overvalued," the concept of pay equity is being badly maligned. In the truest pay equity scheme, one would think that the wages which had been overvalued would be identified along with the wages which had been undervalued.

6/ Comparable Worth: Issues and Alternatives, E. Robert Livernash, editor, (1984), p. 106.

V. FOUR KEY ISSUES DRIVING THE COMPARABLE WORTH DEBATE

A. Average Wage Gap Statistics

Although we often hear that the average woman makes only 64¢ for every dollar earned by the average man, this comparison is misleading. Furthermore, recent studies uniformly conclude that the wage gap is narrowing based on female workers bringing significantly more education, training and other market-rewarded skills to the work force.

(1) Statistical Analysis Can Be Misleading

The statistic most often cited by comparable worth proponents is total earnings, but they generally fail to refine wage disparities with such factors as work experience, occupation, seniority and education. Pay to women and men performing the same job, having the same education, work experience, seniority and other attributes is virtually identical. If a woman were not receiving equal pay for equal work, she would have grounds for a legal complaint.

The Bureau of Labor Statistics (BLS) reports that for the fourth quarter of 1984 the median weekly earnings of full-time wage and salary workers show that women earned 66.25 percent as much as men. BLS also reported that during the past five years the overall trend, despite quarter-to-quarter fluctuations, shows the earnings gap between male and female workers significantly narrowing.[7/]

Comparable worth proponents claim that the fact that women, to a certain extent, currently are clustered in lower-paying jobs is inherently unfair and is "discrimination" which needs to be remedied by law. By their analysis, the market is to blame. However, little evidence suggests that the

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7/ U.S. Department of Labor, Bureau of Labor Statistics.

sector marketplace, comprised of more than five million employers, has conspired to hold the wages of women below that of men. Moreover, such a claim fails to acknowledge that gender-based occupational "clusters" are, to some degree, due to occupational and educational preferences.

(2) Women Have Entered the Labor Force at Record Rates

At the beginning of this century, fewer than one in five women were members of the labor force; by 1983, more than six in ten were. Female labor force participation rates increased 50 percent from 1950 to 1970 and continued to grow at an accelerated rate during the 1970's.[8/] However, the women entering the work force between 1940 and 1970 tended to be less educated and less skilled than their male counterparts of that day or their female counterparts of today. As a result, average wage rates were skewed.

Since the new labor market entrants and re-entrants were less skilled than the women already working, they lowered the average wage of working women. However, because, on the whole, recent female entrants are more educated, more competitively skilled, and tend to be more committed to their professional career, they are competing on the merits with male job applicants and are raising significantly the average wage of women.

The U.S. Civil Rights Commission analyzed annual figures of women's wages versus men's wages. Its report indicates that women earn 64.5 percent of men's average wages when based on annual earnings of mostly full-time workers and 72 percent when based on hourly wage comparisons. If only

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8/ Time of Change: 1983 Handbook on Women Workers, U.S. Department of Labor, Bulletin 298, 1983.

full-time workers between the ages of 20 and 24 are considered on an hourly basis, the female earnings ratio is 89 percent. Women between the ages of 25 and 34 earn 80 percent of what their male counterparts earn.[9/]

Additionally, despite tremendous progress by women in recent years, women still obtain fewer advanced degrees than men and tend to acquire them in fields with lower earnings potential; women work an average of 35.7 hours a week compared with 44 hours a week for men; women are 11 times more likely to leave the work force before retirement than men; and women are more willing to trade-off higher pay for other perceived benefits, such as greater flexibility for entry and exit from the work force or sedentary indoor work.[10/]

Trends indicate that women will not be represented disproportionately in entry-level positions and their aggregate earning levels relative to men's earning levels will increase.

(3) Wage Gap Is Narrowing Without Comparable Worth

In a research project funded by the National Institute of Child Health and Human Development, the Rand Corporation released a report in October, 1984, which offers evidence that refutes charges that no changes are occurring in men's and women's relative wage rates. The Rand study reached three conclusions:

1. The wages of working women did not increase relative to those of working men between 1920 and 1980 because the skill (as measured by education and experience) of working women did not increase relative to the skill of men over this period;

9/ Comparable Worth: An Analysis and Recommendation, a report of the U.S. Commission on Civil Rights, adopted April 11, 1985, by a vote 5-2.

10/ Equal Pay for Unequal Work, Phyllis Schlafly, editor, Washington, D.C., 1984, based on Eagle Forum Education and Legal Defense Fund Conference held October 17, 1983.

2. Women's wages relative to men's wages have increased substantially between 1980 and 1983, although this has largely gone unnoticed;

3. Evidence indicates that the economic status of women will improve significantly relative to that of men over the next 20 years.11/

(4) Wage Disparity Factors

Proponents of comparable worth often contend that the wage gap between male and female workers is solely the result of discrimination. While discrimination -- of the type which can be effectively remedied by existing law -- is a factor, other factors include the following:

- Job Segregation:

  Individual Choice
  Discrimination
  Pre-Employment Societal Conditioning

- Rapid Growth of Females Participating in Job Market in Limited Numbers of Occupations
- Concentrations in Low-Paying Industries
- More Career Interruptions
- Less Seniority
- Differences in Bargaining Power, Union Membership
- Less Human Capital Development
- Dual Career Choices
- Hours Worked

11/ Women's Wages and Work in the Twentieth Century, by J.P. Smith and M.P. Ward, published by Rand Corporation, October 1984.

But, even taking all these factors into account, explanations for the remainder of any wage gap seldom can be found. For example, a wage gap exists between men working in large firms and men in smaller firms. Just because we cannot explain this gap does not mean that the cause of the gap is some sort of discrimination. A further example can be seen in the Illinois study that examined 24 different jobs. One job analyzed was the predominantly male job of electrician, which received 548 points and was being paid more than the predominantly male job of accountant, which received 889 points.

B. Occupational Clustering

A primary reason for the wage gap is that women still are found to be employed in a limited number of jobs -- jobs which tend to pay lower wages. The reasons are complex and varied. While the cause is neither exclusively nor primarily the hiring and personnel practices of employers, as some would have us believe, closing the wage gap is similarly complex and multi-faceted. It should not be simplistically assigned to wholesale government intervention in the labor market.

(1) Women Are Moving into Nontraditional Fields at Record Rates

Although we have no clear-cut definition of what female-dominated jobs are -- whether they are jobs in which women account for 85 percent, 75 percent or 51 percent of all workers -- many women are choosing to enter nontraditional fields of employment and training. More women are being employed as executives, administrators, managers, lawyers, doctors, dentists, engineers and highly skilled workers. More young women are choosing nontraditional fields of education and training.

This is documented by the following trends:

FEMALE ENROLLMENT IN:

	1971	1981
Law School	9.4%	35.3%
Medical School	10.9%	37.9%
Dental School	1.9%	18.7%

	Bachelors'		Masters'		Doctors'	
	1971	1980	1971	1980	1971	1980
Engineering	0.8%	10.3%	1.1%	8.2%	0.6%	4.1%
Business & Management	9.3	36.7	3.9	25.0	2.8	14.8
Agriculture & Natural Resources	4.2	30.8	5.9	23.5	2.9	11.9
Communications	35.3	54.7	34.6	53.0	13.1	41.2
Architecture and Environmental Design	12.0	28.1	14.1	29.1	8.3	21.5
Physical Sciences	14.0	24.6	13.4	20.5	5.6	12.0
Computer and Information	13.6	32.7	10.3	23.0	2.3	9.9

	Bachelors'		Masters'		Doctors'	
	1971	1980	1971	1980	1971	1980
Education	74.4%	75.0%	52.2%	71.5%	21.2%	47.3%
Home Economics	97.3	95.0	93.9	90.2	61.0	68.4
Letters	61.0	59.8	57.5	61.1	23.5	43.6
Library Science	92.0	94.1	81.3	82.7	28.2	56.3

*Source: Statistics taken from various sources as reported in: A Decade of New Opportunity: Affirmative Action in the 1970's, The Potomac Institute, Washington, D.C., October 1984.

C. Gender Discrimination

As noted, comparable worth advocates argue that disparities in income between men and women and the heavy concentration of women in certain occupations are proof of sex discrimination.

(1) Existing Law Is Broad and Effective

Existing laws already provide comprehensive protection against sex-based wage discrimination. For example, under the Equal Pay Act and Title VII of the Civil Rights Act of 1964, women, because of their sex, cannot be:

- denied a job because they are a woman;
- denied equal pay for equal work;
- intentionally paid less than men;
- discriminated against in initial job assignments;
- intentionally segregated into "women's" jobs;
- denied the right to apply for any jobs, particularly higher-paying jobs often performed by men;
- denied training, transfers, promotions or any other job opportunities;
- subjected to intentional job evaluation manipulations that downgrade their pay.

Any employer who violates these laws can be ordered to provide backpay and other remedies to the victim of the discrimination.

Women workers also benefit from the federal government's affirmative action requirements. Federal contractors are required to evaluate their work forces to determine whether women are "underutilized" in any job categories. If they are, the contractor must establish hiring goals and timetables and make good faith efforts to hire women for those jobs in numbers proportionate to their availability in the labor market. If a contractor fails to make good

faith efforts to meet these obligations, the employer can be penalized, including loss of existing contracts and/or being banned from bidding on additional contracts.[12/]

In addition to these extensive federal protections, the vast majority of states and some local governments have similar laws and requirements prohibiting discrimination on the basis of sex.

(2) Congress, National Academy of Sciences, U.S. Civil Rights Commission and Equal Employment Opportunity Commission Have Rejected Comparable Worth

The wage rate legislation originally introduced in the United States Congress in 1962 contained the very comparable worth approach that is being considered by this Subcommittee. That approach was rejected flatly in favor of the equal work standard. The reasons that the equal work rather than the comparable worth standard was adopted are still highly relevant.

Representative Katherine St. George (R-NY) sponsored an amendment to the Equal Pay Act which rejected a comparable worth approach in favor of the equal work approach. She supported her amendment by stating:

> There is a great difference between the word "comparable and the word equal."
>
> . . . the word "comparable" opens up great vistas. It gives tremendous latitude to whoever is to be the arbitrator in these disputes.[13/]

Similarly, Repesentative Phil Landrum (D-GA) noted that the St. George "equal work" amendment would prevent:

12/ Presidential Executive Order 11246 applies to Federal contractors with contracts in excess of $10,000.

13/ 108 Cong. Rec. 14767.

> the trooping around all over the country of employees of the Labor Department harassing business with their various interpretations of the term "comparable" when "equal" is capable of the same definition throughout the United States.[14/]

The House accepted the St. George "equal work" amendment to the Equal Pay Act.[15/]

Thus, when Congress drafted the 1962 Equal Pay Act, it carefully considered and rejected the "comparable" worth approach because of the lack of guidance to employers inherent in such an approach and because it would have given unlimited power to the administrator of such a standard to substitute his or her judgment for that of the employers.

In addition to Congress, another impartial body has rejected the comparable worth approach. In the late 1970's, the Equal Employment Opportunity Commission (EEOC) contracted with the National Academy of Sciences (NAS) to perform a study of wage discrimination allegations and the comparable worth approach. That study was performed by a panel composed of representatives of academia, labor, industry and women's interests.

Contrary to expectations, the NAS committee did not recommend the adoption of a comparable worth approach. In its final report, entitled Women, Work, and Wages, the NAS committee concluded that the comparable worth approach was unworkable, stating:

> One procedure that has been suggested is to compare the actual rates of pay of jobs with the relative worth of jobs; wage discrimination would be suspected whenever jobs are not paid in accordance with their relative worth. This relative (or comparable) worth approach in turn requires a generally acceptable standard of job worth and a feasible procedure for

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14/ 108 Cong. Rec. 14768.

15/ 108 Cong. Rec. 14771.

measuring the relative worth of jobs. In our judgment no universal standard of job worth exists, both because any definition of the 'relative worth' of jobs is in part a matter of values and because, even for a particular definition, problems of measurement are likely. (emphasis added)[16/]

The NAS committee thus concluded that no universal job evaluation approach is feasible.

In addition, the committee cautioned that those who sought to elevate the pay levels of jobs performed largely by women and minorities might be damaging the economic viability of firms, as well as the employment opportunities for women and minorities. The report stated:

> . . . we have not been able to make any assessment of what the social and economic consequences may be of implementing wage policies based on the principle of equal pay for jobs of equal worth. This is an extremely complex question, with no clear answers, which goes well beyond the charge to the committee. We do, however, want to call attention to the need to give careful thought to the possible impact of implementation of a policy of equal pay for jobs of equal worth on the economic viability of firms as well as on employment opportunities for women and minorities.[17/]

The U.S. Civil Rights Commission has advised Congress not to adopt legislation that would establish the comparable worth doctrine in the setting of wages in the federal or private sector.[18/] We commend the Commission's report to you. It contains significant data and sound, reasoned arguments.

16/ Women, Work and Wages, National Academy of Sciences, D. Treiman and H. Hartmann (1981), p. 94.

17/ Women, Work and Wages, National Academy of Sciences, p. 94.

18/ Comparable Worth: An Analysis and Recommendation, a report of the U.S. Commission on Civil Rights, adopted April 11, 1985, by a 5-2 vote.

And, finally, the EEOC rejected comparable worth as a theory of discrimination in recognizing the fact that Title VII of the Civil Rights Act does not cover pay disparities created by non-sex-based decisions of employers. The EEOC indicated that Title VII never authorized the government to "take on wholesale restructuring of wages that were set by non-sex-based decisions of employers, by collective bargaining or by the marketplace."[19/]

(3) The Market Does Not Discriminate Against Women

Only to the extent that the market reflects societal attitudes and biases that may influence "employee choice" in selecting and performing a job can the market be said to be discriminating.

The market obviously is influenced by numerous factors that exist outside the employment context. But, discrimination within the employment context -- for example, where an employer intentionally segregates women into certain jobs -- is against the law. Discriminatory employer practices can be dealt with under present law, and effective remedies exist for persons injured by such practices.

Advocates of comparable worth argue that the law should be broadened to make employers responsible for the marketplace effects that result in lower wages for certain female-dominated jobs, regardless of whether the employer created those conditions. But, to achieve that goal, arbitrary mechanisms to evaluate the relative worth of different jobs must become a basic part of our existing economic system. Such an extensive imposition of subjective job-worth judgments would radically alter our present competitive market system, a system which is based on equal opportunity, not on equal results. Comparable worth seriously would distort markets, including their resources allocation function.

19/ June 17, 1984, statement of Clarence Thomas, Chairman, EEOC.

On this subject, the U.S. Civil Rights Commission has said:

> To the extent that the pay gap results from nondiscriminatory factors -- such as socialization within the family, women's aspirations, women's labor force participation cycles resulting from child-rearing, or discrimination outside of the workplace such as what may or may not occur in education -- an employer has violated no one's right to be paid without regard to his or her gender. Similarly, to the extent that market factors of supply and demand, seniority, and merit factors result in different pay for different jobs, an employer is not guilty of discrimination for relying on them.20/

(4) Comparable Worth Is Preferential Treatment for Groups, Not Equal Opportunity for Individuals.

Because the results for any one group are not statistically equal, we should not assume that our present laws have failed. Comparable worth has the potential, just as quotas, to generate tension between the desire to provide equality for groups in the aggregate and the need to protect the rights of individuals. When a person's group status entitles that person to "x, y, or z," the inevitable result is to (a) reduce the focus on individual merit and ability and (b) increase the role of government, the courts or others who supervise the distribution of societal resources. Equality of results based on group status will be at the expense of equality of opportunity for individuals, and comparable worth is no shortcut to equality for women.

D. Job Evaluations

Job evaluations are considered, by comparable worth proponents, to be capable of objectively determining job worth and comparing completely different jobs.

Being an imprecise art at best, a value-laden rationalization process at worst, job evaluations are incapable of scientifically and objectively discovering the fairest wage. Wage determination is far too complex to reduce such comparisons to any numerical equation which would determine, with the force of law, discrimination.

20/ Comparable Worth: An Analysis and Recommendation, a report of the U.S. Commission on Civil Rights, adopted April 11, 1985, by a 5-2 vote pp. 36-37.

(1) "Worth" Is Not What Determines Wages

Worth is an elusive concept subject to changes based on competition, consumer preferences, individual merit or experience, new technology or other market forces. Two jobs may have comparable characteristics, but they do not necessarily have comparable value. One may work as hard as a rock star, train as hard as Mary Lou Retton, smile as much or know as much as Barbara Walters; but if the rest of society puts a higher value on their products than on others, they will have -- entirely reasonably -- a higher income. Our rewards typically are determined by the community's valuation of what we produce.

On the other hand, when those in positions of authority dislike the results of market preferences, they see a need to "correct market imperfections" through legislative mandate. Comparable worth is such a case. Because there is allegedly someone or something that can more fairly set wages and distribute income, the freedom to confer value through market choices is to be taken away. However, we have not seen evidence of what that process is and evidence of whether that process will be more fair, more efficient or compatible with an economic and political system which values individual freedom.

In sum, what the market does is process information on the scarcity of talents, the tastes of heterogeneous individuals, the demands of consumers and the availability and cost of other resources and technology. Market wages primarily reflect a balance between what employers are willing to pay for workers' services and how much is needed to induce workers to supply the labor for particular jobs.

Employer demand for workers depends primarily on two factors -- labor productivity in the job and the value of the products produced with the labor. Worker supply also depends on a number of factors, some of which are relatively objective and easy to measure, while some are highly subjective and difficult to measure.

The end result is a system of wages which probably seems unfair by any single person's judgment. A society that rewards rock stars like Cindy Lauper, Boy George or Michael Jackson more than it does priests, nurses or social workers appears unfair, unjust and morally wrong. On the other hand, unless we are willing to alter our whole economic and political system, a legal requirement which effectively forces an employer to ignore prevailing market wages or holds the federal government, taxpayers and individual companies responsible for results they did not create simply will not work.

(2) The Role of Job Evaluations

Employers have used job evaluations -- of various sophistication -- for decades. Job evaluations are typically valuable management tools designed and intended for use in consensual contexts with sufficient flexibility to accommodate an organization's needs and changing circumstances. Job evaluations never have been intended to operate apart from or outside of market considerations. Employers cannot ignore labor costs in a competitive economy. Employers must pay whatever workers with essential skills demand. Without a doubt, employers are swayed by considerations of internal fairness, but those are meaningless if looked at in a vacuum. If the economic viability of a business is at stake, if the labor costs are such as to sway an employer to close a business or not to open a business, the costs are borne in lost jobs and lost opportunities.

The job evaluation process requires either an individual or a committee to translate descriptive information for myriad positions into comparative terms that will allow someone to determine the value of the jobs. The translation from descriptive information to comparative data is the essence of job evaluation, and this is an inherently subjective process. Determining the weights or values to be assigned to various jobs is traditionally a management prerogative. The number of discretionary judgments can be substantial -- particularly as the number of factors to be assessed rises. At no time does any of the methods attempt to determine a job's "value" or "worth" in an

absolute sense to the organization. The ultimate determination as to a job's value is the employer's decision as to its worth, and the employee's willingness to accept that decision.

Demonstrating the subjectivity of the job evaluation process, we can compare the job worth points given to the same five jobs in four different states (as a percent of points assigned to electrician):

	Wisconsin	Iowa	Minnesota	Washington
Electrician	100	100	100	100
LPN 2	150	124	79	108
Dental Asst.	108	77	50	73
Telephone Operator	91	64	49	60
Data Entry Operator 1	55	72	43	63

In Wisconsin, the "pay equity" task force presided over a system which assessed 283 state jobs based on 12 factors including knowledge required, effect of actions, stress, hazards and amount of discretion. On the surface each of these factors may seem like a reasonable means to assess the "value" of each state job but in practice the results were rather questionable.

For instance, the Task Force pilot study produced the following comparisons:

Hazard - The pilot study determined that an Aircraft Pilot, a Farm Equipment Operator, and a Teacher III face the same level of hazards on the job.

Knowledge Required - According to the pilot study, Audit Specialist Supervisors, Police Detectives II, and the entry level secretarial position in state government (Program Assistant I) require the same level of knowledge.

Effect of Actions - The pilot study determined that the effects of the actions of Corrections Camp Supervisors, Aircraft Pilots, and Program Assistants I are equal.

In fact, the entry level secretarial position in state government received the same score as an Aircraft Pilot for all of the following factors: job complexity, knowledge required, judgement, amount of discretion and effect of actions.

VI. RECOMMENDATIONS

Congress come to realize that conducting a study and failing to implement it, despite its cost, could result in lengthy and expensive lawsuits and huge liabilities. In addition, the Chamber is concerned with the readiness with which the proponents of this study couch their objectives in terms of discrimination. Claiming that pay disparities between traditionally male and female workers are the result of "discrimination" is inviting a lawsuit. Again, it is well established that wage disparities can be caused by a variety of factors, most of which are nondiscriminatory.

S. 552 should be rejected for the following reasons:

- it is more than just a study, for the following most obvious reasons:

  1. it would implicitly define discrimination in a radical new way and is likely to result in any residual, unexplained wage gap being seen as evidence of discrimination;

  2. the only permissible recommendations for achieving "pay equity" are wage increases;

  3. it would be conducted by a commission likely to place greater value on white-collar jobs than on blue-collar jobs;

  4. the bill wrongly defines job evaluations as "objective" and should be conducted with two or three consultants, operating independently;

- it would be granting the comparable worth theory official Congressional approval;
- it is likely to trigger expensive litigation for the government and taxpayers (it could cost taxpayers some $6.6 billion); and
- it would have far-ranging implications for the private sector.

The issue is not whether we should eliminate unfair and discriminatory compensation practices in the federal government; rather, the issues are these:

1) Is existing law incapable of remedying specific instances of discrimination?

2) Does comparable worth provide a practical, effective way of eliminating pay inequities?

VII. SUMMARY

The solution to occupational clustering of women does not lie in forcing employers to pay higher wages for what has traditionally been called "women's work." To identify unexplained wage gaps between different jobs does not mean that we have identified discrimination. In the words of Carl Sagan, "just because we can't identify a light, doesn't make it a space ship." Every federal court reviewing such studies have said so. Why should Congress reject their interpretation of the law and their assessment of the utility of these job evaluations?

The goal of equal employment opportunity should be to create complete job mobility for women, giving women access to all jobs, including the highest paying, traditionally male jobs, and allowing the concept of "men's jobs" and "women's jobs" to continue to wither away. Comparable worth would do precisely the opposite. It would perpetuate sex-segregated jobs. By artificially raising the pay for traditionally women's jobs to a level above the market rate, comparable worth would create a perpetual and artificial inducement to women now in those jobs to remain in them and would induce new generations of women to continue to limit their career aspirations to traditional women's jobs, even as the number of those jobs shrinks because they have been arbitrarily overvalued by legislative/administrative fiat. What is needed instead is a vigorous effort to eliminate all artificial

barriers that have limited women's employment options. Those barriers include social pressure, women's own attitudes, discrimination, lack of information about opportunities, lack of encouragement and inadequate education and training. All of society -- women and men entering the work force, women and men now in the work force, educators, employers -- must realize that there is no such thing as a "man's job" or a "woman's job," as a matter of law.

The Chamber urges Congress and this Subcommittee to reject the comparable worth concept and S. 552 — particularly when cloaked as a mere study to determine "equity." If Congress wishes to identify discrimination within the federal system, we highly recommend that you modify this "study" to reflect existing civil rights law.

Thank you.

MANUFACTURING CREATES AMERICA'S STRENGTH

TESTIMONY OF
HONORABLE SUSAN VERGERONT
MEMBER, WISCONSIN STATE ASSEMBLY - 60TH DISTRICT

ON BEHALF OF
THE NATIONAL ASSOCIATION OF MANUFACTURERS

BEFORE THE
SENATE SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE

ON
S. 552
FEDERAL EMPLOYEE COMPENSATON STUDY ACT OF 1987
APRIL 22, 1987

National Association of Manufacturers
1331 Pennsylvania Avenue, NW, Suite 1500 — North Lobby
Washington, DC 20004-1703 (202) 637-3000

EXECUTIVE SUMMARY

The National Association of Manufacturers is an advocate of civil rights and has strongly supported affirmative action, in particular Executive Order 11246. NAM supports vigorous enforcement of the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964. NAM's stated policy since 1957 has embraced the concept of equal pay for equal work without regard to sex, race, color, national origin, age, or other personal characteristics. Our members are committed to ensuring that every person in the workplace has equal opportunity to move into management positions, into non-traditional job categories and to be promoted based on merit. The membership is committed to training and retraining to ensure the opportunity for upward mobility and career enhancement. NAM believes strongly in affirmative action programs to enhance minority and female participation in the workforce at all levels, and is encouraged at recent court decisions which clear the path for voluntary affirmative action programs undertaken by businesses.

NAM has no objection to a study of the federal job classification system to ensure that pay practices are in compliance with current law, with one strong cautionary note. Considering the enormous federal budget deficit, Congress should be very wary of raising federal employee hopes for wage increases at a time when government may not be able to deliver and at a time when some private industry is facing wage cut-backs. However, S. 552, as drafted, the Federal Employee Compensation Equity Act of 1987, would seek to determine whether the federal government's wage-setting practices are discriminatory through job analyses methodology which the courts have repeatedly rejected as basis for establishing discrimination. Although the bill does not explictly use the term, "comparable worth," the methodology proposed for the study would indeed be an exercise in comparing the value of completely different jobs through a point system designed by a consultant. Although these job evaluations are commonly used, differences in pay, without more, do not determine discrimination. (American Nurses Association v. State of Illinois, 783 F.2d 716 (7th Cir. 1986)).

Job evaluations are highly subjective as can easily be seen by looking at the results of comparable worth studies performed in Iowa, Wisconsin, Minnesota and Washington. The system developed in Wisconsin, for example -- which gave lower scores to senior positions than to entry-level positions and lower scores to some supervisors than their employees -- has resulted in a costly program for the state with unexpected results. On the average, men workers employed by the state received a bi-weekly pay boost of $31.77 while state women employees received $17.77.

State experience and court decisions dictate that any proposal for a federal study which would consider the existence of a wage gap to be prima facie evidence of discrimination should be denied. If the Congress wishes a study of the federal classification system, it should so direct. Discrimination should be eliminated where it exists, but it is a senseless and costly exercise to attempt to do so based on the flawed process of comparable worth.

Mr. Chairman and members of the Subcommittee, my name is Susan Vergeront. I am an elected representative to the Wisconsin State Assembly from the 60th district and a member of the Wisconsin Women's Council. I am appearing here today on behalf of the National Association of Manufacturers, an association with more than 13,500 corporations of every size and industrial classification located in every state. NAM member companies employ 85 percent of all workers in manufacturing and produce more than 80 percent of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its National Industrial Council and Associations Council, which includes my own state's group, the Wisconsin Manufacturers Association.

I am here today because I am intimately familiar with the comparable worth study of Wisconsin's state workforce and NAM believes that information on this study will help with your deliberations on S. 552, a proposal to study the federal workforce. I appreciate this opportunity to appear before you.

STATE EXPERIENCE.

Comparable worth assumes that all jobs have a quantifiable, intrinsic value. Although there are many job evaluations currently is use--including whole job ranking, position classification and factor comparison--there is no scientifically valid job evaluation system that is suitable for universal application. Regardless of the system used, job evaluation always entails some degree of subjectivity. The National Academy of Science, commissioned by the Equal Employent

Opportunity Commission to conduct a study of some comparable worth issues, concluded that the value or worth of jobs cannot be determined by scientific methods. It was their judgment that "no universal standard of job worth exists, both because any definition of the 'relative worth' of jobs is in part a matter of values and because even for a particular definition, problems of measurement are likely."

The subjectivity of job evaluations is demonstrated by the variances among state comparable worth studies. For example, take the illustration of Wisconsin, Iowa, Minnesota and Washington:

JOB WORTH POINTS AS A PERCENTAGE OF POINTS ASSIGNED ELECTRICIANS

	WISCONSIN	IOWA	MINNESOTA	WASHINGTON
electrician	100	100	100	100
LPN 2 (nurse)	150	124	79	108
dental ass't.	108	77	50	73
telephone op	91	64	49	60
date entry op	55	72	43	63

The chart shows that three states rate licensed practical nurses higher than electricians, while Minnesota ranks them considerably less. In Wisconsin, the job evaluation system ranked dental assistants more valuable than electricians, while in Minnesota they were found to be worth only half of what electricians were paid.

A study by the Center for the Study of American Business at Washington University in St. Louis further illustrates the inconsistencies of job evaluation. In its study, the Center took three state studies, Iowa, Minnesota and Vermont, and converted the

point scores to a common base for comparison purposes. Vast discrepancies occur. For example, in Minnesota, a registered nurse, chemist and social worker all have equal values and would be paid the same. Iowa's study found the nurse worth 29 percent more than the social worker, who in turn is worth 11 percent more than the chemist. While the chemist also receives the lowest point score of the three positions in the Vermont study, the social worker and nurse reverse rankings. The social worker is valued about 10 percent more than the nurse, who is worth 10 percent more than the chemist.

Findings in the Wisconsin study which baffle common sense also point out the problems of measurements. For example, on the "surroundings" factor, a dentist and dental assistant working in the same environment received different points. The dentist received 5 points; the dental assistant 6.3. On the "consequence of error" factor, typists received 14.1 and aircraft pilots, 12.5!

A comparison of the same job across states also shows discrepancy. A photographer is valued more than twice as highly in Vermont as in Iowa, while in Minnesota the job is worth 25 percent more than in Iowa. A Minnesota librarian is worth 30 percent more than a Vermont librarian, who in turn is 20 percent more valuable than one in Iowa.

The fact that jobs are valued differently in different circumstances is not surprising. To be discriminatory, however, the differences in pay must be due to the fact the the job incumbents are of one particular characteristic; e.g., women. The courts have understood this in their rejection of comparable worth studies as basis for determining discrimination.

The subjectivity of job evaluation is also demonstrated in variance of factors used. In Kansas, a study considered eight factors, Michigan has 11, Wisconsin used 12 and New York used 14. Each factor must also be weighted or assigned a relative importance. In Michigan, the knowledge factor received an 11 percent weight while Iowa doubled it to 25 percent. In addition, the value of the job characteristics is dependent on the individual job evaluator. In the case of a New Mexico task force, four of the eight job evaluators agreed on the worth of only eight percent of the jobs analyzed. In essence, half of the evaluators could not agree on the same level for a given job in 824 of the 896 classifications evaluated.

Cost can also not be ignored. In Wisconsin, the most frequently cited figure on the cost of implementing this study to the Wisconsin taxpayer is $18 million. The actual cost, according to the Minority Report on the Wisconsin Task Force on Comparable Worth, is $43 million per year. The $18 million figure includes only that portion of comparable worth legislation paid from general purpose tax revenues. The majority of the cost, $24 million, will be funded by federal funds, foundation grants, and user fees including university tuition, hunting fees, motor vehicle taxes, etc.

The report also indicates concern about the impact on the private sector in Wisconsin. A 1985 study by the Public Expenditure Survey of Wisconsin, comparing private sector and state employee pay policies, concluded that the state pays its employees an average of 18.4 percent more than the private sector. Those job categories selected for the

comparable worth study were paid 12 percent more than the private sector. After implementation of the study, those jobs were paid 61 percent more than the private sector.

Pay raises for a segment of the public workforce will only increase the pay gap between the private and public sectors. In order to compete with the public sector for qualified applicants, private employers will be forced to offer higher starting salaries or forego hiring additional employees. As wage increase, the economic climate will deteriorate as the cost of business rises. Wisconsin ranks 13th nationwide in state spending, according to the Wisconsin Taxpayer's Alliance. Citizens and business shoulder the costs of this level of spending. As a result of the additional spending formula, Wisconsin businesses are concerned that they will find it increasingly difficult to compete effectively with businesses in neighboring states.

COURT REJECTION OF COMPARABLE WORTH. American Nurses Association v. State of Illinois, 783 F.2d 716 (7th Cir. 1986)

In American Nurses Association v Illinois, the 7th Cir. rejected that portion of the complaint which relied on a comparable worth study. The decision allows the case to go forward, but only on a claim of intentional sex discrimination and refuses to sanction a comparable worth study or the employer's failure to implement its recommendations as a basis for a claim of Title VII employment discrimination. Thus, while a decision to pay low wages solely because a worker is female may be actionable, there is no Title VII

violation if all the employer has done is pay market wages. AFSCME v. State of Washington, 770 F. 2d 1401, (9th Cir. 1985) (en. den. March 31, 1987.

The Court here held that the simple fact that an employer pays prevailing market wages is not, without more, a basis for a claim of intentional sex discrimination. A compensation system that is solely responsive to the law of supply and demand is not the type of specific employment practice which can support such a claim on the disparate impact theory. The Court reaffirmed its position on March 31, 1987, by denying to rehear the case. AFSCME v State of Washington, 770 F. 2d 1401, 1407 (9th Cir. 1985).

ALTERNATIVES TO COMPARABLE WORTH.

If the Congress is truly interested in the "feminization of poverty" or eradicating the causes of the wage gap, comparable worth is the wrong approach. For it will serve as a incentive for women to remain in the so-called "pink ghetto."

Industry is focusing on what it can do to open new doors to its current and future female workforce. We believe these are the types of things Congress should focus on in ensuring that women have equal opportunity in the United States. Other states, too, are taking second looks -- and are agreeing with industry.

First, if our socializing process, through education and counseling, is steering women into only the traditional female occupations, let's attack that problem. Already many new companies are making available to schools women who work in non-traditional jobs to explain to our nation's youth the wide range of opportunities for

women in corporate America. More can and should be done. Schools should carefully review the way they steer young people into jobs -- telling all students without regard to sex where the opportunities lie that will best suit their talent.

Second, educational opportunities for women and minorities already in the workplace should be stressed. NAM supports, for instance, the continuation of the Employee Education Assistance Act, which allows employees to claim $5,250 a year tax-free for educational tuition benefits -- whether or not the eduation is related to their current employment. This is particularly beneficial for employees in the lower paying jobs, where education may provide the opportunity for them to move into new careers. Training and retraining, too must be stressed, not just for women, but for all employees. NAM members are committed to these programs, and hope that Congress will work with industry to ensure that these human resource opportunities are fostered as a national policy.

Third, government and private employers should focus on individual merit, not rigid classification in determining wages. The trend toward paying for individual merit is really in juxtaposition to the whole concept of comparable worth. It is ironic that at time when so many deregulated industries are moving their pay classification systems away from rigid classifications toward pay on individual merit, comparable worth is capturing so much attention. Further, at a time when the federal government is also attempting to reward those employees who do the best jobs, rather than all employees within an individual occupational category, it would be unfortunate to implement comparable worth.

-6-

Recently, clerical positions within the federal government in the Washington, D.C. area were given pay raises in order for the federal government to compete with the private sector. Would other job classifications then be raised in order to comply with the concept of comparable worth?

AN EXAMINATION OF S. 552

NAM does not object to a study of the federal classification system to determine that it is in compliance with current law -- with a strong cautionary note regarding the staggering federal budget deficit. Congress should be wary of undertaking a study that would raise employee hopes of raised wages with a government not in a position to provide those salaries.

S. 552, however, introduces the concept of comparable worth by directing a study of "within and between" the position classification systems of two entirely different job systems as a basis for discrimination (Sec. 4(a) "to determine whether distinction between rates of pay ... are not based on considerations of sex, race, or national origin.") and includes direction to the Office of Personnel Management to specify a timetable to carry out the commission's recommendations.

The bill does not recognize the subjectivity of job analysis and in its definition uses the term "objective." This is not an insignificant point nor a semantic game. After the experience of studies and considerable discussion, the drafters of the bill still don't appear to understand that job evaluations are subjective.

The bill prohibits the reduction of pay. It is illegal under the 1963 Equal Pay Act to reduce workers' pay to eliminate illegal salary differences. With its prohibition of wage reduction, the bill makes the assumption that wage discrepancies are illegal.

S. 552 includes a problematical parameter for a job evaluator by specifying the study be conducted in relationship to the pay of positions where either sex is "numerically predominant or any race or ethnic group is disproportionately represented." Determination of gender or ethnic dominated classes has varied in the different state studies. As a Kansas study noted, female or male dominated classes with few members can distort the distribution of job classes. A class, for example, with only one employee is gender dominated by definition.

In addition, the makeup of the commission as specified in the bill runs the danger of preconceived results. In order to truly appoint an objective commission, NAM would recommend a commission of federal employers, employees and a neutral chairman. NAM further recommends that three consultants be selected to perform independent studies and that these consultants be selected after proposals for the study are submitted by consultants interested in performing the study. A cost estimate should be submitted for each recommendation and the studies should also include a list of those jobs which are overpaid.

CONCLUSION.

NAM recognizes that there is a wage gap between men and women, but believes that much of the gap can be attributed to women's relatively recent entry into the workforce and differences in training, education and experience. As women have made dramatic advances in recent years, that wage gap has narrowed. According to the Bureau of Labor Statistics report of the fourth quarter of 1986, women working full-time earned 69 percent of the median earnings for men.

According to the U.S. Civil Rights Commission, among workers aged 20 to 24, the female earnings ratio is 89 percent; women between the ages of 25 to 34 earn 80 percent of what their male counterparts earn. The gap varies depending on the age of the women, reflecting a past with different education, training and experience and economic role of women in families. Today, for example, women outnumber men in freshman college classes and are directing themselves to formerly male-dominated fields of study such as business, law and medicine.

Equal pay for equal work and equal opportunity should remain the hallmark of our system and our efforts should be directed at ensuring that equal opportunity exists for all members of our society.

aspa
Managing Human Resources

TESTIMONY OF

AMERICAN SOCIETY FOR PERSONNEL ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES

POST OFFICE AND CIVIL SERVICE

SENATE GOVERNMENTAL AFFAIRS COMMITTEE

S.552

Lawrence Z. Lorber
Breed, Abbott & Morgan

April 22, 1987

Mr. Chairman, Members of the Committee, my name is Lawrence Lorber. I am a partner in the law firm of Breed, Abbott & Morgan. I am testifying today on behalf of American Society for Personnel Administration (ASPA) regarding Senate Bill S.552, the Federal Employee Compensation Equity Act of 1987.

ASPA is the world's largest professional association devoted to human resource management issues. ASPA's 36,000 members represent organizations which employ more than 40 million people. ASPA and its members have had a vital concern with the orderly development of law in the human resource management area. The area of employee compensation, which S.552 addresses, is certainly of major interest and one to which ASPA has devoted significant study and effort over the years. ASPA has been in the forefront of compensation issues. In 1981, it cooperated with the American Compensation Association and jointly published the monograph, Elements of Sound Base Pay Administration which has become a basic tool of compensation management. In 1985, the ASPA Foundation published Sex and Salary: A Legal and Personnel Analysis of Comparable Worth which explored the human resource management and legal issues attendant to the comparable worth issue. ASPA has also filed several amicus curiae briefs on compensation issues and has testified at many hearings at the State and Federal levels, including several Congressional hearings related to legislation dealing with compensation issues.

It is with this background of long and concerned involvement with public policy issues related to compensation that ASPA offers these comments on S.552. S.552 will establish a Commission which will hire a consultant to undertake a study of the Federal classification, grading and pay-setting processes in order to determine "whether [the Federal Compensation System] results in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented that are not in proportion to the duties, difficulty, responsibility, and qualification requirements of the work performed." § 4(a)(1).

The study design set up by S.552 contains a significantly flawed concept of compensation analysis and attempts to incorporate, albeit by indirection, the legally rejected theory of compensation discrimination known as comparable worth into the federal compensation system.

ASPA does not oppose a general review of the Federal compensation system. To the contrary, appropriate compensation practices suggest that periodic reviews of compensation systems to assure that they are being administered properly and reflect the employer's current business objectives are a necessary component of compensation administration. However, the study proposed by S.552 is a completely different type of compensation analysis and one which raises issues regarding the integrity of the study design.

Our concern with the proposed study lies in three major areas:

First: The scope of the study is restricted to jobs in which incumbents are of numerical predominance by race or sex. This limitation restricts the study in a way almost guaranteed to result in skewed results. If the intent of the legislation is to determine whether certain jobs may be undercompensated because of the race or sex of incumbents, then it is imperative that other jobs where such "preponderance" is not present be examined as well to determine if the integrity of the system is at fault rather than an aberrational result not connected to the compensation system.

The impact of this design flaw is made clear in this illustration. Assuming that the consultant determines that the pay level for a predominantly female job differs by 20% from the predicted value base upon the criteria set forth in the legislation, the legislation would then assume a 20% differential based upon a prohibited factor -- sex. However, if a non-female predominant job resulted in the same adverse differential, sex would be eliminated as a factor. Yet it is precisely this comparison which is not permitted to be made by the terms of S.552. In directing the study to focus only on certain jobs chosen not for their representative nature but rather for their demographic makeup, the legislation evinces an intention to achieve a predetermined result.

Second: The proposed study is a classical Title VII compliance review masquerading as a compensation study. Since 1972, the Federal Government's personnel system has operated under the structures of equal employment law. One of the principle objectives of the law is to insure that employment decisions including those involving compensation are reached without unfair or invidious burdens created based on the race or sex of employees or job applicants. To the extent that the federal personnel system has operated in a manner inconsistent with equal employment principles, then the specific remedial provisions of the law would apply. The volume of reported federal personnel equal employment cases indicates that there is no bar to a full adjudication of such grievances.

One of the major hallmarks of equal employment law is that the means of determining the desirability of jobs, and the measure of exclusion from such jobs is almost always based on the compensation levels for such jobs. In other words, the equal employment posture of an employer is often determined by the percentage of minorities or females in the better paying jobs. The proposed study would turn that concept on its head. Rather than determining whether there is insufficient job mobility for certain group members, the proposed study incorporates the hypothesis that they should stay where they are but only get paid more. This is a wholly inappropriate statement of public policy

and mischaracterization of accepted compensation practices and should be shunned by this Committee.

Just recently two major cases were decided by the Courts which cast an appropriate focus on this issue. In the case styled Johnson v. Santa Clara County Transportation Department, the Supreme Court reannunciated the basic principles of affirmative action. The Court held that an employer could take the sex, or race, of an individual into consideration when undertaking an employment decision, in this case a promotion, when such consideration did not represent an untoward intrusion on the rights of other employees. The Johnson decision will seemingly end the debate over acceptable affirmative action. Not only is this a decision which ASPA supports now, but it was the amicus curiae brief filed by ASPA in support of the employer's affirmative action plan which was cited and relied upon by the majority to support its essential conclusion that affirmative action is within the law. It is ASPA's belief that reasonable affirmative action will continue to decrease the number of jobs in which one race or sex predominates.

However, two weeks earlier, the Ninth Circuit issued a decision which received little note but which could have impact on the development of the law of compensation discrimination in this area. In the case styled S. F. Police Officers Association v. San Francisco, 43 FEP Cases 495 (9th Circuit, 1987), the police union challenged the action of the City in designing a new weighting

system for police promotion tests after the tests were given in order to achieve a desired racial balance. The Court of Appeals ruled that by changing the weighting after the tests were given, the requirements of Title VII and the affirmative action standards of Weber were violated. Regardless of the appropriateness of the result desired, the Court held that changing a system simply to change the result violates the law.

How different would be the methodology directed by this study in which compensation levels for selected jobs would be changed not because of any inherent problem with the compensation system but because the results did not measure up to a chimerical view of compensation parity.

Third: The validity of the proposed study is brought into further doubt by the requirement of § 5(b)(2) which forbids the Commission from even recommending a result which could result in a redirection of pay for any position. Thus prohibited from seeing evil, speaking evil or hearing evil (evil being defined as overgraded jobs), the "objective job analysis" contemplated by the study is in fact hardly objective. The legislation would establish a "feel good" study in which the only parties who wouldn't feel good would be federal taxpayers and those who have concerns about fair public policy. Any compensation professional, except the one chosen for this potentially lucrative project, would view such constraints as tainting the entire project. Whether an employer chooses to act upon a consultant's

recommendation to reduce pay levels as part of a major review of its compensation system is an issue dependent upon legitimate employment and management factors, it is quite another to forbid the recommendations from being made in the first place. If the price for undertaking such a study is the renunciation of legitimate compensation analysis, then the study has been priced too high.

Legal Issues

Although disclaiming any intent to establish a comparable worth requirement for the federal system, this Committee should be apprised of the law in this area so that it can best judge the appropriate policy the Federal Government should follow.

After an initial period of confusion after the Supreme Court's decision in County of Washington v. Gunther, the various Courts of Appeals reviewing compensation discrimination issues have achieved a rare degree of unanimity in rejecting claims that statistical differences in compensation levels between different racial groups or between males and females constitute discrimination. In Spaulding v. University of Washington, 740 F.2d 686 (9th Circuit 1984); AFSCME v. State of Washington, 770 F.2d 1401 (9th Circuit, 1985); and American Nurses Association v. State of Illinois, 783 F.2d 716 (7th Circuit, 1986), the concept of comparable worth or pay equity as defined by statistical imbalances has been rejected. In a particularly thoughtful

opinion in the American Nurses Association case, Judge Posner analyzed the fundamental underpinnings of the comparable worth concept which presumes the existence of an analytical technique for determining the relative worth of jobs that involve different levels of skill, effort, responsibility and working conditions and found it to be nonexistent. While anyone can play with the numbers, no one should be under any illusion that the result has any degree of objectivity or scientific credibility. The various Court opinions have recognized the truth of the premise that job evaluation is an art, not a science, and that compensation systems are an inappropriate vehicle to deliver social change when their task is to deliver a fairly compensated and productive workforce.

ASPA would add that our wholehearted endorsement of these developments should be considered in the light of our oft-stated view, enunciated in our amicus brief in Gunther case and elsewhere, that intentional compensation discrimination is a violation of law. The conscious decision to compensate a job less because its current incumbent is a female or a minority is no less a violation of law than employment practices which prohibit women from holding certain jobs or requiring minorities to meet non job-related employment standards.

Conclusion

ASPA welcomes any effort to revitalize the Federal compensation system and would eagerly lend its own expertise and resources to the effort. However, S.552 does not achieve this

goal. Rather, it is a thinly veiled effort to resurrect the discredited notion of comparable worth and sets up a seriously flawed study whose requirements and design are inappropriate. We therefore strongly urge this Committee to reject this bill. While it is probably the right time to undertake a legitimate review of the Federal compensation system, S.552 does not achieve that result.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

20 APR 1987

Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter sets forth the views of the Department of Justice on S. 552, a bill "[t]o improve the efficiency of the Federal classification system and to promote equitable pay practices within the Federal Government and for other purposes." This bill was introduced on February 19, 1987, and was referred to the Committee on Governmental Affairs. The Department of Justice opposes enactment of this legislation.

The short title of this legislation is the "Federal Employee Compensation Equity Act of 1987." Section 3 of the bill establishes a Commission on Compensation Equity. The composition of the Commission and its powers, operating procedures, and compensation are described in Sections 6, 7, 8 and 11 of the bill.

Section 4 of the bill directs the Commission to hire a consultant to conduct a study of position classification, job grading, and pay-setting processes in the federal government "[t]o determine whether distinctions between rates of basic pay for [positions in federal agencies] reflect substantial differences in the duties, difficulty, responsibility, and qualification requirements of the work performed . . . and are not based on considerations of sex, race, or national origin" (Section 4(a)).1/ The government's position classification, job grading, and pay-setting processes are to be studied, "using standard objective job-evaluation and economic analysis techniques, to determine whether the development or implementation of these processes results in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented that are not in proportion to the duties, difficulty, responsibility, and qualification requirements of the work performed"

1/ The procedures for selecting a consultant are set forth in Section 9 of the bill.

(Section 4(a)(1)).2/ Section 4 also directs the Commission to prepare a report containing its findings based on the study, "including a list of any such positions and the extent of the differences in the rates of pay in such cases" (Section 4(a)(2)).

Section 5 of the bill contains more detailed reporting requirements. The report required by Section 4 is to be submitted to the appropriate congressional committees and to the Director of the Office of Personnel Management [OPM], and is to contain, in addition to the Commission's findings based on the study, its recommendations for appropriate administrative or legislative action (Sections 5(a) and 5(b)). The Director of OPM must then submit a report to the Commission and to the same congressional committees commenting on the Commission's report and establishing a plan and timetable for carrying out each of the Commission's recommendations, or giving reasons for not establishing such a plan; the Commission may then respond (Sections 5(c) and 5(d)).

The bill provides that "[t]he consultant's study and any findings, conclusions, recommendations, or comments by the consultant or the Commission . . . with respect to such study shall be considered to be of an advisory nature only" (Section 4(e). The bill also provides that "[n]othing in this title shall be construed to limit any of the rights or remedies provided under the Civil Rights Act of 1964, section 6(d) of the Fair Labor Standards Act of 1938 [(the Equal Pay Act)], or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap, or age" (Section 10).

This legislation promotes the unsound concept of "comparable worth" -- sometimes mislabeled as "pay equity." Any attempt on the part of the federal government to identify pay differentials between jobs held predominantly by men and "comparable" jobs held predominantly by women (or between jobs held predominantly by individuals of different races or ethnicity), and then to recom-

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2/ The term "objective job evaluation analysis" is defined as "a quantitative method of rating positions within occupations based upon factors such as the skill, effort, responsibilities, qualification requirements, and working conditions involved so that comparisons may be made with respect to the positions and occupations involved" (Section 2(7)). The term "economic analysis" is defined as "a method of analyzing differentials in pay between and among positions within occupations in order to determine if, and the extent to which, those differentials are attributable to factors such as seniority, merit, productivity, education, work experience, geographic factors, supply and demand factors, or any other factors exclusive of sex, race, or ethnicity" (Section 2(6)).

mend methods to eliminate such differentials without proof of discrimination, would be as unworkable as it is unwarranted. Moreover, as a matter of public policy, even preliminary steps toward implementation of the "comparable worth" theory in this fashion would be a serious and grave error.

On the most fundamental level, the bill implies the existence of universal, accepted standards for determining the "comparability" of job duties, responsibilities, qualifications and working conditions. No such standards exist. Even if there were agreement on such standards, the underlying premise of the proposed legislation would still be defective. Nothing in current antidiscrimination law supports the proposition that the federal government must pay its employees in dissimilar jobs declared by an outside consultant to be "comparable" the same, or essentially the same, wages. Nor is there any legal authority to justify requiring even a partial adjustment in the wages paid employees in one occupation based on higher salaries offered to others in another, entirely different occupation on grounds that the two jobs can be "rated" by a consultant as comparable (on whatever criteria).

Rather, existing law (the Equal Pay Act and Title VII of the 1964 Civil Rights Act) commands that men and women receive equal pay for equal work and forbids employers from intentionally depressing the wages of their female employees in any job on account of sex. Title VII also forbids such discrimination on the basis of race or national origin. Nothing in S. 552 is helpful to the enforcement of those antidiscrimination provisions. The comparability study it contemplates seeks only to confirm for select job pairings the obvious fact that employees in different jobs receive different pay.

The bill requires the use of "standard objective job-evaluation . . . analysis techniques" (Section 4(a)(1) (emphasis supplied)), defining "objective job evaluation analysis" as "a quantitative method of rating positions within occupations based on factors such as the skill, effort, responsibilities, qualification requirements, and working conditions involved" (Section 2(7)). Job evaluation experts, however, are virtually unanimous in their agreement that there is no such thing as an "objective" or "scientific" method of rating these factors and comparing two different jobs to determine their comparable worth. See, e.g., Women, Work and Wages: Equal Pay for Jobs of Equal Value (D. Treiman & H. Hartmann ed. 1981), at 10, 94, 96 [hereinafter "Treiman & Hartmann"]; D. Schwab, "Using Job Evaluations to Obtain Pay Equity," Comparable Worth: Issue for the 80's (a Consultation of the U.S. Commission on Civil Rights (1984)), Vol. I at 89, 90 [hereinafter "Consultation"]; H. Northrup, "Comparable Worth and Realistic Wage Setting," Consultation, Vol. I at 96; "Are Comparable Worth Systems Truly Comparable?,"

Center for the Study of American Business at Washington University (1986).

Some employers do use job evaluation methods as a tool, in their overall compensation procedures, to provide sound employer-employee relations and to establish an acceptable means of overcoming wage instability in a workplace resulting from constant grievances concerning pay. As such, the method must be acceptable to management and employees in a particular workplace to achieve its objectives. Treiman & Hartmann, at 96; Northrup, Consultation, Vol. I at 94, 95; A. Bellak, "Comparable Worth: A Practitioner's View," Consultation, Vol. I at 77, 78; Vol. II at 50, 60, 61. Moreover, such evaluation methods are not used independent of factors such as external wage rates, seniority and merit. Schwab, Consultation, Vol. I at 85, 89; Northrup, Consultation, Vol. I at 96. Further, all job evaluation methods are inherently subjective. Treiman & Hartmann, at 10, 77, 94, 96; D. Treiman, Job Evaluation: An Analytic Review, Interim Report to the Equal Employment Opportunity Commission (1974), at 39; Schwab, Consultation, Vol. I at 89, 90 ("it must be recognized that job evaluation is not an objective system that can be operated without a great deal of human judgment . . . it is an inherently subjective technique"); Bellak, Consultation, Vol. I at 77, 79; Northrup, Consultation, Vol. I at 96. Compelling an employer to use formal job evaluation methods, or a particular job evaluation method, then, is inherently contradictory: it coerces the employer or employee group or both to use a subjective process, the success of which depends greatly on both parties' acceptance of the process. Further, job evaluation methods cannot identify the existence of discrimination. Schwab, Consultation, Vol. II at 52; see Bellak, Consultation, Vol. II at 67-69. The bill, then, prescribes a role for job evaluation methods -- establishing an "objective" determination of the worth of different jobs as a means of eliminating "discrimination" in wages -- that no such method is capable of fulfilling.

The bill also calls for an "economic analysis" of federal agency pay rates, which will be used to "analyze" why the pay for two totally different jobs of purportedly comparable worth is not the same (see Section 4(a)(1)). Such an analysis is to determine whether, and the extent to which, such pay differentials are attributable to job-related factors, including seniority, merit, productivity, education and "any other factor exclusive of sex, race, or ethnicity" (Section 2(6)). To the extent that any part of the pay differential between two jobs of supposedly "comparable worth" is not explained by such factors, that differential may be considered to be attributable to sex, race or ethnic discrimination in compensation in the federal work force (see Section 4(a)), and a plan and timetable for its elimination will then be required (see Section 5(c)).

There is virtual unanimity that no statistical study is able to take into account all of the nondiscriminatory factors that affect compensation and that any unexplained residual in such a study -- a residual which itself can vary depending on the nature of the study -- is just that, unexplained. See, e.g., J. O'Neill, "An Argument Against Comparable Worth," Consultation, Vol. I at 181; Proceedings of June 6, 1984 (remarks of C. Goldin), Consultation, Vol. II at 8, 13, 14; Bellak, Consultation, Vol. II at 68. This is not to suggest that there can be no pay discrimination reflected in the residual, but only that the analysis proposed in the bill is incapable of demonstrating that such pay discrimination exists or the extent of it. Yet the bill virtually compels the Commission it creates to presume that the unexplained portion of a pay differential is due to discrimination.

Both the Equal Pay Act and Title VII specify that pay differentials based on seniority, merit, quantity, or quality of production, or any other "factor other than sex," do not constitute discrimination based on sex. 29 U.S.C. 206(d)(1) (Equal Pay Act); see 42 U.S.C. 2000e-2(h)) (Title VII). The Supreme Court in County of Washington v. Gunther, 452 U.S. 161 (1981), held that the Bennett Amendment to Title VII (42 U.S.C. 2000e-2(h)) permits an employer to set differential pay when authorized under one of the affirmative defenses found in the Equal Pay Act.

Manifestly, the Equal Pay Act does not prohibit the pay practices and differentials the bill seeks to identify and eliminate. In enacting that statute, Congress considered and specifically rejected proposals which would have imposed liability for unequal pay on the basis of sex for jobs of a comparable character. For example, Representative Goodell, a cosponsor of the Act, stressed the significance of the change from "comparable work" to "equal work":

> I think it is important that we have clear legislative history at this point. Last year when the House changed the word "comparable" to "equal" the clear intention was to narrow the whole concept. We went from "comparable" to "equal" meaning that the jobs involved should be virtually identical, that is, that they would be very much alike or closely related to each other.
>
> We do not expect the Labor Department to go into an establishment and attempt to rate jobs that are not equal. We do not want to hear the Department say, "Well, they amount to the same thing," and evaluate them so that

> they come up to the same skill or point. We expect this to apply only to jobs that are substantially identical or equal.

109 Cong. Rec. 9197 (1963) (emphasis added). See County of Washington v. Gunther, supra, 452 U.S. at 184-188 (Rehnquist, J., dissenting); American Nurses' Association v. State of Illinois, 606 F. Supp. 1313, 1316-1317 (N.D. Ill. 1985), reversed and remanded on other grounds, 783 F.2d 716 (7th Cir. 1986). The Equal Pay Act carves out one fact situation where disparate treatment could always be presumed -- men and women doing equal work but receiving unequal pay -- and prohibits this differential except where justified by any of four affirmative defenses.

Title VII of the Civil Rights Act of 1964 was enacted one year after the Equal Pay Act. Section 703(a)(1) of that statute makes it unlawful for an employer "to discriminate against any individual with respect to his compensation . . . because of such individual's sex" (42 U.S.C. 2000e-2(a)(1)). In Gunther, the Supreme Court held that plaintiffs could assert a claim of sex discrimination in compensation under Section 703(a)(1) of Title VII, without alleging a denial of equal pay for equal work, where the pay for a woman is the result of intentional discrimination provable by direct evidence.

The Court in Gunther emphasized the narrowness of its holding, stressing that it was not addressing a claim based on "the controversial concept of 'comparable worth,' where plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community" (452 U.S. at 166). The Court strictly confined its holding to authorizing only claims which "seek to prove by direct evidence, that their wages were depressed because of intentional sex discrimination" (ibid. (emphasis added)).

The Equal Pay Act prohibits paying a woman less than a man where the jobs are equal. Title VII, as construed in Gunther, prohibits paying a woman less for work where it is shown, by direct evidence, that the employer has intentionally depressed the woman's pay because she is a woman. Virtually all courts presented with comparable worth claims in Title VII suits have rejected those claims as having no basis in law. See, e.g., American Nurses' Association v. State of Illinois, 783 F.2d 716 (7th Cir. 1986); AFSCME v. State of Washington, 770 F.2d 1401 (9th Cir. 1985); Foster v. Arcata Associates, Inc., 772 F.2d 1453, 1465 n. 5 (9th Cir. 1985); Spaulding v. University of Washington, 740 F.2d 686 (9th Cir.), cert. denied, 469 U.S. 1036 (1984); Plemer v. Parsons-Gilbane, 713 F.2d 1127 (5th Cir. 1983); Christensen v. State of Iowa, 563 F.2d 353 (8th Cir. 1977); Penk v. Oregon State Board of Higher Education, No. CA 80-436FR (D. Ore.) (judgment dismissing comparable worth claims entered

March 29, 1985); Connecticut State Employees Association v. State of Connecticut, 31 Empl. Prac. Dec. þ 33,528 (D. Conn. 1983); Power v. Barry County, 539 F. Supp. 721 (W.D. Mich. 1982). By mandating a "comparable worth" study of the federal pay structure dependent neither on proof of equal work nor on proof of intentional discrimination, this bill disregards the long-established principles of pay discrimination under the Equal Pay Act, and goes well beyond the Supreme Court's interpretation of the reach of Title VII in Gunther. In so doing, the bill gives rise to the very problem Congress sought to avoid in imposing an equal (rather than "comparable") work requirement in the Equal Pay Act.

The proposed legislation could ultimately lead to the imposition upon the federal government of the massive responsibility of resetting wage rates for the purpose of eliminating alleged sex, race or ethnic pay discrimination that may be largely or entirely nonexistent. It serves no useful purpose to take even the first step toward restructuring the entire federal wage scale to eliminate differentials in jobs of "comparable worth" where those differentials may well be the product, not of proven discrimination, but of employer and employee decisions based on legitimate, nondiscriminatory labor market factors.

The Department of Justice rejects the validity of any comparable worth plan as a measurement of, or remedy for, alleged wage discrimination, and is concerned that the reports mandated by this bill would be misused as the basis for class action litigation seeking a judicially mandated restructuring of the entire federal pay and classification system. The Department's concern is not that such reports would constitute a valid basis for a successful lawsuit against the federal government. Rather, the Department's concern is that the highly subjective "study" mandated by the bill is rigged to make the seriously erroneous finding that differences in pay between dissimilar jobs are caused by discrimination. Litigation in which plaintiffs use the seriously flawed results of such a study as evidence could result in unjustified court orders requiring the total restructuring of the entire federal pay and classification system. Section 5(e)'s statement that the study and any findings, conclusions, recommendations or comments by the consultant or the Commission regarding the study "shall be considered to be of an advisory nature only" is wholly incapable of preventing the use of such a study in litigation. Indeed, the "official" nature of the study may enhance its status.

Furthermore, the bill contains serious constitutional flaws which are independent reasons for opposing its enactment.

First, the Commission created by Sections 3 and 6 of the bill is to be composed of nine members, two appointed by the President, three appointed by the Director of OPM, and one each appointed by the majority leader of the Senate, the minority

leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives. Congress should not, absent compelling reasons, establish a Commission composed of members of both the legislative and executive branches. The creation of such a hybrid Commission, which is neither clearly legislative nor clearly executive, tends to erode the important structural separation of powers, a fundamental principle ordained by our Constitution. The Framers of the Constitution purposely divided federal authority among three separate branches of government. As established by this bill, the Commission could not be considered a part of any one of the branches, and would be in the difficult position of having to serve two masters. Although the branches of Government are not "hermetically sealed" from one another, Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 951 (1983), the separation of powers inherent in our Constitution requires that each branch maintain its separate identity, and that functions and responsibilities be clearly assigned among the separate branches, so that each can be held accountable for its actions. Buckley v. Valeo, 424 U.S. 1, 120-124 (1976). The proposed Commission does not mesh with this constitutional structure.

Our second constitutional objection relates to Section 5(c) of the bill, which provides that not later than ninety days after the Commission submits to the appropriate congressional committees its report on the results of the consultant's study, the Director of OPM

> shall submit to such Committees and the Commission a report commenting on the Commission's report and specifying the Director's plan (and timetable therefor) to carry out each of the Commission's recommendations or, in the event that the Director does not specify a plan to carry out one or more of such recommendations, the Director's reasons for not specifying such plan.

It is possible to interpret this provision as making the Commission's report binding on the executive branch since the Director is required to comply with each of its recommendations, unless he specifies reasons for noncompliance. As so interpreted, such a provision would raise two serious constitutional problems. First, since the Commission by virtue of its membership is not wholly within the executive branch, issuing "recommendations" that must be implemented by the executive branch would, we believe, essentially constitute the passage of legislation. The Commission is, in effect, drawing up new laws for the executive branch to implement. However, the delegation of legislative functions to committees or commissions clearly contravenes the Constitution. See Immigration and Naturalization Service v. Chadha, supra. If Congress wishes to enact the Commission's recommendations into law, it is free to do so. What it cannot do is direct the executive branch to execute "recommendations" that

have not been enacted by both houses of Congress, presented to the President for signature, and signed into law.

Second, even if one were to assume that the Commission is within the executive branch (an assumption which is at odds with its membership) and is itself executing the law by issuing the equivalent of agency regulations, a person who exercises significant authority pursuant to the laws of the United States is necessarily an officer in the constitutional sense and must be appointed in conformance with the Appointments Clause of the Constitution. See U.S. Const., art. II, sec. 2, cl. 2; Buckley v. Valeo, supra, 424 U.S. at 126, 141. However, four of the members of the Commission are appointed by members of Congress, a method of appointment that is not in conformance with the Appointments Clause. Thus, whether the Commission is viewed as attempting to create new law or to implement existing law, we believe that its activities would violate the Constitution if the Commission's recommendations have binding force on the Director of OPM.

Whether or not one views the Commission's functions as binding or merely advisory, Section 7(e)(4) of the bill raises additional constitutional problems. This section forbids any officer or agency of the federal government from requiring the Commission to submit any report or recommendation for approval, comment or review prior to submission of the material to the Congress or congressional committees. Thus, although those members of the Commission appointed by the President or the Director of OPM are subordinate executive branch officials, they will not be permitted to submit their proposals to the President for his review. However, the President, as Chief Executive, is charged with supervising the work of subordinate officers in order to insure that the laws are "faithfully executed." U.S. Const., art. II, sec. 3. We do not believe that Congress has the power to interfere with that supervisory power by interdicting communications between the President and his subordinates and therefore believe that this provision is unconstitutional.

Similarly, the constitutionality of Section 7(e)(4) can be further questioned in light of Section 5(b)(2) of the bill, which directs the Commission to prepare recommendations "for such administrative or legislative actions" as it considers appropriate. Again, Section 7(e)(4) forbids any officer of the executive branch -- including, we must assume, the President -- from reviewing such proposed legislation before it is submitted to Congress. However, the Constitution states that it is the President's duty to submit only such recommendations for legislation "as he shall judge necessary and expedient." U.S. Const., art. II, sec. 3. We believe that Section 7(e)(4) is a grave interference with that power, and that the President must have the power to direct his subordinate officers, and perhaps the entire Commission, insofar as a majority of its members are

executive officers. Thus, the attempt by Congress to deny the President such power would be a significant interference with the President's power to require that the executive branch submit to Congress only legislation that he judges "necessary and expedient."

No good reason has yet been advanced for the enactment of this legislation. S. 552 does not address legitimate "pay equity" concerns of women who receive lower wages than their male counterparts for the same work. Nor is the comparable worth study commissioned by the bill calculated to assist in identifying Title VII wage discrimination in the form of intentionally depressed female wages. Further, the comparable worth study is not useful in identifying race or ethnic pay discrimination. What the study will show is that wholly different jobs can be "rated" by outside consultants as comparable yet offer wholly different pay -- a fact well known without a study. If sex, race or ethnic discrimination is involved in any federal pay practice, existing law already provides adequate relief. We remain opposed to weaving out of whole cloth a legislative presumption of wrongdoing in the setting of federal wages.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report and that enactment of S. 552 would not be in accord with the program of the President.

Sincerely,

John R. Bolton

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Assistant Attorney General

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STATEMENT OF

THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

IN SUPPORT OF

S. 552

THE FEDERAL EMPLOYEE COMPENSATION EQUITY ACT OF 1987

BEFORE

THE FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE

SUBCOMMITTEE OF

THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

APRIL 22, 1987

The American Association of University Women, with 150,000 members nationwide, appreciates this opportunity to offer the Subcommittee its views on pay equity and in support of S. 552, the Federal Employee Compensation Equity Act of 1987.

Founded in 1881, AAUW has worked for many years to end sex and race-based wage discrimination. The Washington (DC) branch of AAUW conducted a pay equity study of the federal work force in 1913. AAUW's 1922 Legislative Program called for a reclassification of the Civil Service including a merit system without regard to sex, and for the repeal of salary restrictions in the Women's Bureau. In 1955, AAUW supported a bill introduced by Congresswomen Edith Green (D-OR) and Edith Rogers (R-MA) which would have required "equal pay for work of comparable value requiring comparable skills." President Dwight D. Eisenhower, in his 1956 State of the Union address, called for the bill's passage as "a matter of simple justice."

Today, as then, the AAUW believes that economic equity--pay equity--is still a matter of simple justice. AAUW's diverse membership who represent most professions and occupations, including that of homemaker and volunteer, are united in the recognition that regardless of the work women do, that work is generally undervalued and underpaid. Pay equity is again a public policy priority for the AAUW.

Pay equity is the goal of eliminating the persistent and sizeable wage disparities between male and female and between white and minority workers. One means of achieving this goal is "comparable worth," or equal pay for jobs requiring comparable skills, effort, responsibility and working conditions. The Equal Pay Act, enacted in 1963, has failed to address the problem of occupational segregation, which is characterized by women and minorities being clustered in undervalued jobs at the low end of the pay scale. According to a 1986 National Academy of Sciences report, approximately 35-40 percent of the wage gap between women and men can be attributed to the fact that wages for female-dominated jobs are much lower than those for male-dominated jobs.

AAUW contends that the federal government, as a major employer funded by taxpayers of both sexes and all races, has an obligation to be a model of fair and equitable employment and compensation practices. Therefore, AAUW supports S. 552, a bill providing for an independent study of the federal pay and classification systems to determine to what extent existing wage disparities are caused by sex- and race-based wage discrimination. The federal work force has not been studied for this purpose since the federal classification systems were created in 1923. However, job evaluation studies have been employed for different purposes by the federal government: the National War Labor Board during World War II and the Wage Stabilization Board during the Korean War were required to

compare jobs for "equal pay." Job evaluation studies are currently used by many major private corporations as well.

The federal government lags far behind other public employers in investigating and correcting sex- and race-based wage discrimination. Since 1980, more than 125 pay equity initiatives have been undertaken by state and local governments. Twenty-eight states have now undertaken pay equity studies and seventeen states have begun some form of implementation of pay equity adjustments to cleanse their compensation systems of residual sex- and race-based wage discrimination.

The evidence of occupational segregation in the federal work force is indisputable: 55 percent of the women are concentrated in just 77 of the 885 occupational series in the GS and FWS systems and they are largely confined to the lowest grades in each occupational series. Women make up to 75 percent of the work force in grades 1 through 6, but only 25 percent in grades 10 through 12, and 10 percent in grades 13 through 15.

Wage disparities between men and women are apparent in the federal work force: according to the 1985 GAO Comptroller General report, "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems," male employees earn an average annual salary of $27,720 while female employees average

$18,810 a year.

Although the wage gap between federal workers is smaller than it is in the private sector, it is still considerable. On the average, women earn 63 percent of what men earn in the federal government compared with only 56 percent in the private sector. Perhaps because pay equity has begun to be implemented by some state/local governments, the wage gap is smaller in those employment systems where women earn on average 71.5 percent of what men earn.

Wage disparities between women and men cannot be explained by seniority and education alone. In fact, highly educated women continue to earn less than men with less education. The recent landmark study of race- and ethnicity-based wage discrimination conducted by the National Committee on Pay Equity shows that if jobs in which Blacks and Hispanics predominate were paid the same as White male jobs with the same level of education and experience, the average monthly salary of the lower-paid groups would increase from $1808 to $2059. Wage discrimination accounts for a large part of the wage gap. A federal job evaluation study, combined with an economic analysis, is needed immediately to determine the extent of wage discrimination and to provide an information base necessary for the implementation of more equitable federal pay and compensation systems.

Although pay equity opponents sometimes claim that making pay systems more equitable would bankrupt the nation, the costs of implementing pay equity are no less reasonable than the costs of implementing child labor laws, minimum wage laws, equal credit legislation and the Equal Pay Act. In states and localities where pay equity adjustments have been implemented without litigation costs (and resulting back pay awards), the costs have been within the range of normal cost-of-living pay raises. In the private sector, several major corporations are already implementing pay equity adjustments after their job evaluation studies showed that female-dominated classifications within their workforce were undervalued and underpaid. Responsible public policy makers should acknowledge that the higher costs of pay inequities are borne by traditionally disadvantaged groups--women and people of color. Pay equity is an idea whose time has come. And a federal pay equity study is long overdue.

For four years AAUW has been a strong advocate for a federal pay equity bill that twice achieved passage in the House but died in Senate committee. AAUW urges the Subcommittee to give S. 552 its strong support and to work for passage on the Senate floor. The federal government must fulfill its responsibility to provide fair pay without regard to race or sex.

AAUW is an association of 150,000 members, active in 1750

local branches nationwide, promoting equity for women, education and self-development over the life span, and positive societal change.

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STATEMENT

OF THE

AMERICAN FEDERATION OF STATE, COUNTY

AND MUNICIPAL EMPLOYEES

ON

S. 552, THE FEDERAL EMPLOYEE COMPENSATION EQUITY ACT

BEFORE THE

GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON

FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICES

APRIL 22, 1987

The American Federation of State, County and Municipal Employees (AFSCME), a labor union representing 1.4 million public employees is pleased to submit this statement in support of S. 552, the Federal Employee Compensation Equity Act, introduced by Senators Evans and Cranston. We thank Chairman Pryor and the Subcommittee for holding this hearing.

This year, the Senate has a real opportunity to join with the House in enacting legislation to study the federal civil service system to determine whether sex-based or race-based pay inequities exist. By passing this legislation, the federal government will be simply following the lead of many state and local governments in reviewing its compensation system for bias. Most states and many units of local government have already completed at least a preliminary analysis, and a number have begun correcting the inequities uncovered. Since the federal system has not been comprehensively reviewed for over half a century, the legislation will provide an opportunity to assess whether the race or sex of the incumbent job holders has implicitly and impermissibly crept into the process of establishing and maintaining the federal compensation system.

For a proposal merely to establish a study commission, this bill has generated an unprecedented amount of controversy. The arguments raised against this legislation are the same arguments we have heard raised across the country in state legislatures, in city councils and at the bargaining table. These arguments are simply unfounded.

AFSCME has had considerable experience in conducting pay equity studies and in implementing pay equity adjustments at the bargaining table. This experience provides concrete evidence refuting the arguments raised by opponents of the legislation.

When surveying public sector pay equity initiatives, the first thing which becomes apparent is the pervasiveness and consistency of underpayment in female-dominated jobs. Point factor job evaluation studies conducted using a number of different systems, studies conducted using a policy capturing approach, and informal studies comparing jobs based on education and experience requirements invariably show a systematic pay gap between male-dominated and female-dominated jobs.

The data also reveals that job segregation continues unabated in the public sector. Most women still work in traditional women's jobs; women earn on the average less than two thirds of what men earn; and a substantial part of the gap cannot be explained by differences in job content between male-dominated and female-dominated jobs.

Much of the opposition encountered when a pay equity study is proposed stems from the fear that disparities will be uncovered leading to the issue of what to do about them. It is our belief that the federal government should welcome the opportunity to examine the civil service system to ensure that the government is fulfilling its legal mandate not to discriminate and its moral obligation to be a model employer.

A major argument raised against pay equity studies is that they rely on job evaluation which cannot be used to compare dissimilar jobs. The fact is that every employer formally or informally compares the value of unlike jobs in setting pay, including the federal government. Someone makes the decision at which GS level to put a budget analyst and at which GS level to put a clerk. In effect, this amounts to a comparison of dissimilar jobs. Moreover, the federal government already uses a number of different job evaluation methodologies - indeed, it would be virtually impossible to maintain such a vast compensation system without the aid of job evaluation analytic tools.

So to the extent that the methodologies used by the federal government are consistently applied and are free of built in bias, the sex and race-based disparities will be minimized. Indeed, the studies completed in the States of Ohio and Maine uncovered a smaller pay gap than those found in most other jurisdictions. In both these states, the employer already used and consistently applied a single job evaluation system. Nevertheless, the studies did uncover some sources of bias built into the systems that needed to be corrected.

Clearly, job evaluation is not a new phenomenon. It is widely used throughout the public sector and is certainly no stranger in the federal government. Pay equity merely introduces gender and race to the internal equity considerations. What the

pay studies have uncovered in Minnesota, San Jose, Washington, New York, New Jersey and elsewhere is that there are two distinct salary practice lines - one for male jobs and one for female jobs. The studies show that as the amount of skill, effort and responsibility increases, the pay for male-dominated jobs increases, as does the pay for female-dominated jobs. But, at any job evaluation point level, the average pay for female-dominated jobs is consistently below the average for comparable male jobs. It is precisely this gap with which we are concerned.

Contrary to what some opponents of the legislation argue, it is not the goal of pay equity to pay all jobs strictly in accordance with job evaluation points. There may well be nondiscriminatory reasons -- for example, skill shortages and collective bargaining history -- that account for differences in pay among comparable jobs. A pay equity study merely uses job evaluation as a tool to identify the general magnitude of the underpayment of female-dominated jobs. It does not demand rigidity.

Another major myth circulating about pay equity is that it is the free market that sets wages. Civil Rights Commission Chair Clarence Pendleton described employers as "wage seekers." This implies that employers have no control over their pay systems. They merely do a wage study and pay accordingly.

The fact is that the pay for most jobs is set based on internal comparisons rather than based on what other employers

pay. While many employers do some kind of wage survey, they, by no means, revise their pay systems in strict conformance with the survey. For example, the practice of the State of Washington, which is probably not typical of most employers, is to conduct a wage survey of a small sample of jobs, index other jobs to those surveyed, allow several layers of the bureaucracy to tamper with the indexing, then disregard the entire process by granting across-the-board percentage increases.

From an economic standpoint, the market theory is intellectually dishonest. The market for labor is different from the market for commodities. When there is an oversupply of qualified workers, wages of incumbents do not fall. Similarly, when the supply of qualified workers decreases, salaries of incumbent workers rise less and more slowly than expected if indeed there were a free market.

This does not mean that the market can never be referenced. Employers legitimately keep track of the general pay levels in the area to help them maintain their relative positions. Furthermore, if real shortages of a particular skill exist, pay equity does not prohibit paying a premium.

The most basic formulation of the pay equity concept is that sex or race need not be a factor in establishing pay. To the extent that other considerations, including the market, enter the process and do not introduce discrimination, pay equity does not demand these other considerations be ignored.

The experience with pay equity among public employers has clearly demonstrated that adjusting the pay and classification system to eliminate sex bias does not result in exorbitant cost increases. In the State of Minnesota, the original estimate was that full implementation of the pay equity study would cost approximately four percent of the payroll budget. After a four year implementation accomplished through legislation and collective bargaining, the actual cost was only about three percent. The cost pattern for other public employers has been similar.

The key to rebutting the cost argument is the fact that the impact is lessened by phasing in a pay equity agreement. While we would have preferred a shorter time table in Washington State, we realized that $100 million is a lot of money. We were able to obtain half of it during the first year, so we were willing to accept a phase in over seven years rather than four years. AFSCME represents public employees who depend on state and local government for their livelihood and economic well-being. We would hardly be expected to support measures that would bankrupt our employers.

In the last Congress, the specter of litigation was raised by opponents of the pay equity legislation. Members were warned that if they voted for a federal pay equity study they were buying a lawsuit. After all, opponents said, that is what happened in the State of Washington after it completed a study.

In fact, this was not the reason why AFSCME initiated a law suit in the State of Washington. We went to court because of the intransigent attitude of state officials toward the issue and their steadfast refusal to do anything over a protracted period of time. We have encountered the same intransigence and recalcitrance in Nassau County, New York and in the City of Philadelphia and have, therefore, filed suit against both employers. There is no study in either jurisdiction. In both cases, however, there is considerable evidence of discriminatory practice in how the system is maintained. Studies do not cause litigation.

Nor should opponents assume that the Ninth Circuit's reversal in AFSCME v. Washington State is the end of pay equity as a legal theory. The U.S. Supreme Court's 1981 decision in Gunther v. County of Washington is still legally binding and represents the high court's last word on whether a claim of discrimination in compensation can be successfully pursued where the jobs being compared are not the same. Furthermore, last year in a race discrimination case, Bazemore v. Friday, the Supreme Court unamimously approved the use of statistics, including regression analysis, as evidence of discrimination. The Bazemore court also held that employers must eliminate even pre-Title VII disparities which have been carried forward to the present. If the Bazemore analysis is applied to sex-based salary disparities, claims of final legal victory by pay equity opponents appear to be premature.

Our union is continuing to negotiate pay equity adjustments and to work for legislation to study various compensation systems. In many states, there has been substantial progress. Pay equity has become so commonplace that when the State of Massachusetts negotiated with our union, inequity adjustments up to 20 percent of pay for approximately 60 female-dominated job classes, there were no nationwide headlines. We estimate that our members across the country have already received over $250 million in pay equity adjustments, without excessive cost, without destroying the market, without downgrading the pay for men's jobs and without setting up a new salary administration bureaucracy.

We are certain that the federal government has the will and the resources to analyze the federal pay system and root out any systematic bias that may be uncovered. S. 552 is really a very simple bill to address a matter of simple justice. We urge favorable action on this long overdue legislation.

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WRITTEN TESTIMONY

OF

FEDERALLY EMPLOYED WOMEN

FOR

THE SENATE GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON FEDERAL SERVICES

ON

S. 552

APRIL 22, 1987

WRITTEN TESTIMONY OF FEDERALLY EMPLOYED WOMEN FOR THE SENATE GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE ON S. 552; April 22, 1987.

FEDERALLY EMPLOYED WOMEN IS AN INTERNATIONAL MEMBERSHIP ORGANIZATION REPRESENTING WOMEN IN THE FEDERAL GOVERNMENT THROUGHOUT THE UNITED STATES AND FOREIGN NATIONS. FEDERALLY EMPLOYED WOMEN (FEW) WAS FOUNDED IN 1968 TO TAKE ACTION TO END SEX DISCRIMINATION, ADVOCATE EQUAL OPPORTUNITY, AND INCREASE JOB OPPORTUNITIES FOR WORKING WOMEN IN THE FEDERAL GOVERNMENT. AS THE ONLY NON-GOVERNMENTAL ORGANIZATION TO SOLELY REPRESENT THE CONCERNS OF THE OVER 900,000 WOMEN EMPLOYED BY THE FEDERAL GOVERNMENT, FEW HAS A VITAL INTEREST IN THE REALIZATION OF A STUDY OF THE FEDERAL CLASSIFICATION SYSTEMS FOR SEX AND RACE BASED WAGE DISCRIMINATION.

WAGE DATA

A WAGE DIFFERENTIAL BETWEEN MALE AND FEMALE EMPLOYEES EXISTS IN THE FEDERAL WORKFORCE. FEDERALLY EMPLOYED WOMEN CAN EXPECT TO EARN 63 PERCENT OF THE WAGES OF FEDERALLY EMPLOYED MEN. ALTHOUGH WOMEN COMPRISE NEARLY HALF OF THE WORKERS IN THE GENERAL SCHEDULE (GS) CLASSIFICATION SYSTEM, 73 PERCENT OF THESE WOMEN ARE IN GS GRADES ONE THROUGH EIGHT. MALE-FEMALE WAGE DIFFERENTIALS ARE NOT ONLY LIMITED TO THE GS CLASSIFICATION SYSTEM IN THE FEDERAL SECTOR. ALTHOUGH WOMEN COMPRISE ONLY 9 PERCENT OF ALL WAGE GRADE EMPLOYEES, 86 PERCENT OF ALL WOMEN WITHIN THIS CLASSIFICATION SYSTEM ARE CONCENTRATED IN GRADES ONE THROUGH EIGHT. THE AVERAGE SALARY FOR FEDERAL WOMEN WORKERS IN THE GS SYSTEM IS $19,463 PER YEAR AS COMPARED TO $30,819 PER YEAR FOR MEN. IN THE WAGE GRADE SYSTEM, WOMEN EARN AN AVERAGE ANNUAL SALARY OF $15,492 AS COMPARED TO $22,895 FOR MEN. AVERAGE ANNUAL SALARIES

FOR MINORITY WOMEN EMPLOYED BY THE FEDERAL GOVERNMENT ARE EVEN LOWER THAN THOSE FOR THEIR WHITE FEMALE COUNTERPARTS. IN WHITE COLLAR OCCUPATIONS, BLACK WOMEN EARN AN AVERAGE SALARY OF $18,425 PER YEAR AND HISPANIC WOMEN EARN AN AVERAGE SALARY OF $17,799 PER YEAR. IN BLUE COLLAR EMPLOYMENT, THE AVERAGE SALARY FOR BLACK WOMEN IS $16,548 PER YEAR AND THE AVERAGE SALARY FOR HISPANIC WOMEN IS $17,676 PER YEAR. (SEE FIGURE I).

OCCUPATIONAL DATA

ONE OF THE MAIN CONTRIBUTING FACTORS TO THE MALE-FEMALE WAGE DIFFERENTIAL IS OCCUPATIONAL SEGREGATION. MEN AND WOMEN HAVE TRADITIONALLY HELD DIFFERENT JOBS IN OUR SOCIETY AND THERE IS LITTLE EVIDENCE THAT THIS TREND IS CHANGING. IN THE FEDERAL GOVERNMENT, WOMEN'S EMPLOYMENT PATTERNS ARE SIMILAR TO THOSE WOMEN WHO WORK IN THE PRIVATE SECTOR. FEDERALLY EMPLOYED WOMEN ARE OVERREPRESENTED IN THE CLERICAL OCCUPATIONS (85.6 PERCENT OF ALL CLERICAL EMPLOYEES) AND UNDERREPRESENTED IN THE PROFESSIONAL OCCUPATIONS (27.2 PERCENT OF ALL PROFESSIONAL EMPLOYEES). (SEE FIGURES II AND III). IF OCCUPATIONAL DATA ARE EXAMINED AT THE DETAILED LEVEL, THE SEPARATION OF MEN AND WOMEN IN DIFFERENT OCCUPATIONS BECOMES CLEAR. THE AFFIRMATIVE EMPLOYMENT STATISTICS PUBLISHED BY THE OFFICE OF PERSONNEL MANAGEMENT IN SEPTEMBER 1984 LISTS 475 WHITE COLLAR OCCUPATIONS. OVER 80 PERCENT OF THE EMPLOYEES ARE MALE IN 175 OF THOSE OCCUPATIONS AND OVER 70 PERCENT OF THE EMPLOYEES ARE FEMALE IN 88 OF THOSE OCCUPATIONS. THE SAME REPORT LISTS 38 BLUE COLLAR OCCUPATIONS OF WHICH 31 OCCUPATIONS COMPRISE OVER 80 PERCENT MALE EMPLOYEES. THOSE OCCUPATIONS WHERE WOMEN PREDOMINATE ARE LOWER GRADE/LOWER WAGE OCCUPATIONS THAN THOSE JOBS WHERE MEN ARE THE MAJORITY WORKFORCE (ILLUSTRATED IN FIGURE IV).

FEDERAL CLASSIFICATION SYSTEMS

THE OCCUPATIONAL CROWDING OF WOMEN INTO CERTAIN JOB CATEGORIES COUPLED WITH THE WAGE DATA MAKES A STRONG CASE FOR DISCRIMINATORY PRACTICES IN THE FEDERAL GOVERNMENT. PAY EQUITY FOR FEDERALLY EMPLOYED WOMEN WOULD ENSURE THAT FEDERAL EMPLOYEES, REGARDLESS OF SEX OR RACE, WOULD BE PAID EQUALLY FOR JOBS THAT ARE OF COMPARABLE VALUE TO THE GOVERNMENT AS THE EMPLOYER (IN TERMS OF SKILL, EFFORT, RESPONSIBILITY, AND WORKING CONDITIONS). INHERENT IN THIS DEFINITION IS THE ASSUMPTION THAT THE EMPLOYER HAS A UNIFIED JOB EVALUATION SYSTEM WHICH CAN ASSIGN RELATIVE VALUE TO ALL JOBS, CREATING A SCHEME OF INTERNAL EQUITY.

THE GENERAL SCHEDULE WAS DESIGNED IN 1949 TO PRESERVE THE PAY AND JOB RELATIONSHIPS THAT WERE ESTABLISHED IN THE 1923 CLASSIFICATION ACT. DURING THE 1970'S, JOB EVALUATION AND RANKING METHODS WERE FURTHER DEFINED BY THE ADDITION OF THE FACTOR EVALUATION SYSTEM (FES) WHICH ASSIGNS QUANTITATIVE MEASUREMENTS AND REPLACES THE NARRATIVE INTERPRETATIONS FOR DIFFERENT OCCUPATIONS.

UNDER THE FACTOR EVALUATION SYSTEM, GRADES ARE ASSIGNED ACCORDING TO THE NUMBER OF POINTS ACCUMULATED FROM THE EVALUATION OF NINE FACTORS (KNOWLEDGE, SUPERVISORY CONTROLS, GUIDELINES, COMPLEXITY, SCOPE AND EFFECT, PERSONAL CONTACTS, PURPOSE OF CONTACTS, PHYSICAL DEMANDS, AND WORK ENVIRONMENT) FOR EACH JOB. THESE SKILLS ARE COMMON TO ALL JOBS AND EACH PART OF A FACTOR IS EXAMINED, MATCHED TO A JOB AND ASSIGNED POINTS. WHERE POSSIBLE DISCRIMINATION ENTERS THIS SYSTEM IS THE WEIGHT PLACED (AND HENCE THE POINTS ASSIGNED) ON THE VARIOUS FACTORS. FOR EXAMPLE, THE PERSONAL CONTACTS FACTOR FOCUSES

ON HIGH LEVEL INTERACTIONS AND UNDERVALUES CONTACTS WITH NUMEROUS PEOPLE OR SICK PEOPLE. THE WORK ENVIRONMENT FACTOR FOCUSES ON PHYSICAL DANGER AND UNDERVALUES REPETITION, INTERRUPTION, CONFINEMENT, THE USE OF VIDEO DISPLAY TERMINALS, AND GENERAL OFFICE HAZARDS. OFTEN TIMES, THE UNDERVALUED FACTORS ARE SIGNIFICANT PORTIONS OF OCCUPATIONS WHERE WOMEN PREDOMINATE. INSTEAD OF DEVELOPING A BIAS FREE OBJECTIVE EVALUATION SYSTEM, A RANKING SYSTEM HAS EMERGED THAT MAKES A SUBJECTIVE SYSTEM MORE SYSTEMITIZED WITH QUANTITATIVE WEIGHTS. ALTHOUGH THE SYSTEM WAS CREATED TO ENSURE EQUITABLE COMPENSATION FOR DIFFERENT JOBS (UNDER 5. U.S.C. CHAPTER 51) BASED SOLELY ON THEIR CONTENT , THE FEDERAL CLASSIFICATION SYSTEM HAS NEVER BEEN STUDIED TO DETERMINE WHETHER SEX OR RACE ARE DETERMINING FACTORS IN ASSIGNING WAGE RATES.

S. 552

S. 552 WOULD AUTHORIZE AN INDEPENDENT STUDY OF THE FEDERAL CLASSIFICATION SYSTEMS TO DETERMINE WHETHER SEX, RACE, OR NATIONAL ORIGIN ARE FACTORS IN ASSIGNING GRADES (AND HENCE WAGES) TO DIFFERENT OCCUPATIONS. THIS STUDY WOULD BE LIMITED TO THE FEDERAL CLASSIFICATION SYSTEM AND INCLUDE AN ECONOMIC ANALYSIS AS WELL AS A JOB CONTENT STUDY.

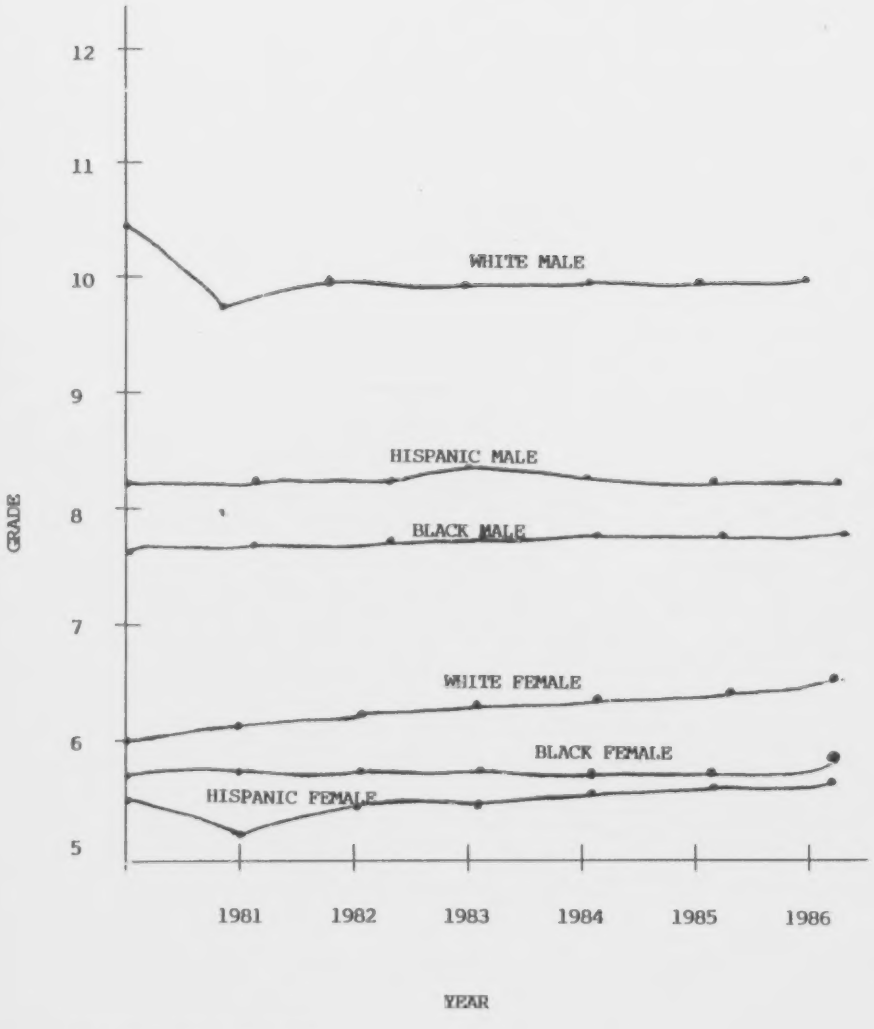
THERE ARE MANY COMPELLING REASONS WHY PAY EQUITY SHOULD BE REALIZED IN OUR SOCIETY AND IN THE FEDERAL CLASSIFICATION STRUCTURE. WOMEN CONTRIBUTE TO THE EFFICIENCY AND PRODUCTIVITY OF OUR FEDERAL GOVERNMENT ON THE SAME LEVEL AS THEIR MALE COUNTERPARTS AND SHOULD BE COMPENSATED EQUITABLY. RETIREMENT ANNUITIES ARE DEPENDENT UPON A FEDERAL EMPLOYEE'S EARNINGS. LOW WAGES DIRECTLY TRANSLATE INTO SMALL PENSIONS. IN 1986, THE AVERAGE

FEDERAL ANNUITY FOR A WOMAN RETIRED FROM THE FEDERAL GOVERNMENT WAS LESS THAN $8,000 PER YEAR. THE FEDERAL GOVERNMENT SHOULD TAKE THE LEAD AND ACT AS A ROLE MODEL FOR STATE AND LOCAL GOVERNMENTS AS WELL AS THE PRIVATE SECTOR TO FOLLOW IN THE PURSUANCE OF EQUALITY. IN ACTUALITY, HOWEVER, THE FEDERAL GOVERNMENT IS SERIOUSLY LAGGING BEHIND OTHER STATE AND LOCAL GOVERNMENTS IN DEVELOPING PAY EQUITY INITIATIVES. TO DATE, 23 STATES HAVE CONDUCTED STUDIES SIMILAR TO THE ONE MANDATED BY S. 552, 14 STATES HAVE IMPLEMENTED THE RECOMMENDATIONS OF THOSE STUDIES, AND ONLY 4 STATES HAVE TAKEN NO ACTION. IT IS TIME FOR THE FEDERAL GOVERNMENT'S CLASSIFICATION SYSTEMS TO BE STUDIED FOR SEX AND RACE BASED WAGE DISCRIMINATION.

FEW URGES THIS COMMITTEE TO IMMEDIATELY CONSIDER S. 552 AS IT IS OF UTMOST IMPORTANCE FOR FEDERAL WORKERS TO BE COMPENSATED ON AN EQUITABLE BASIS.

THANK YOU.

FIGURE I. AVERAGE GRADE BY SEX AND RACE, 1980 - 1986.



SOURCE: FEDERAL TIMES

FIGURE II. PERCENT OF WOMEN WITHIN MAJOR OCCUPATIONAL GROUPS IN THE FEDERAL GOVERNMENT.

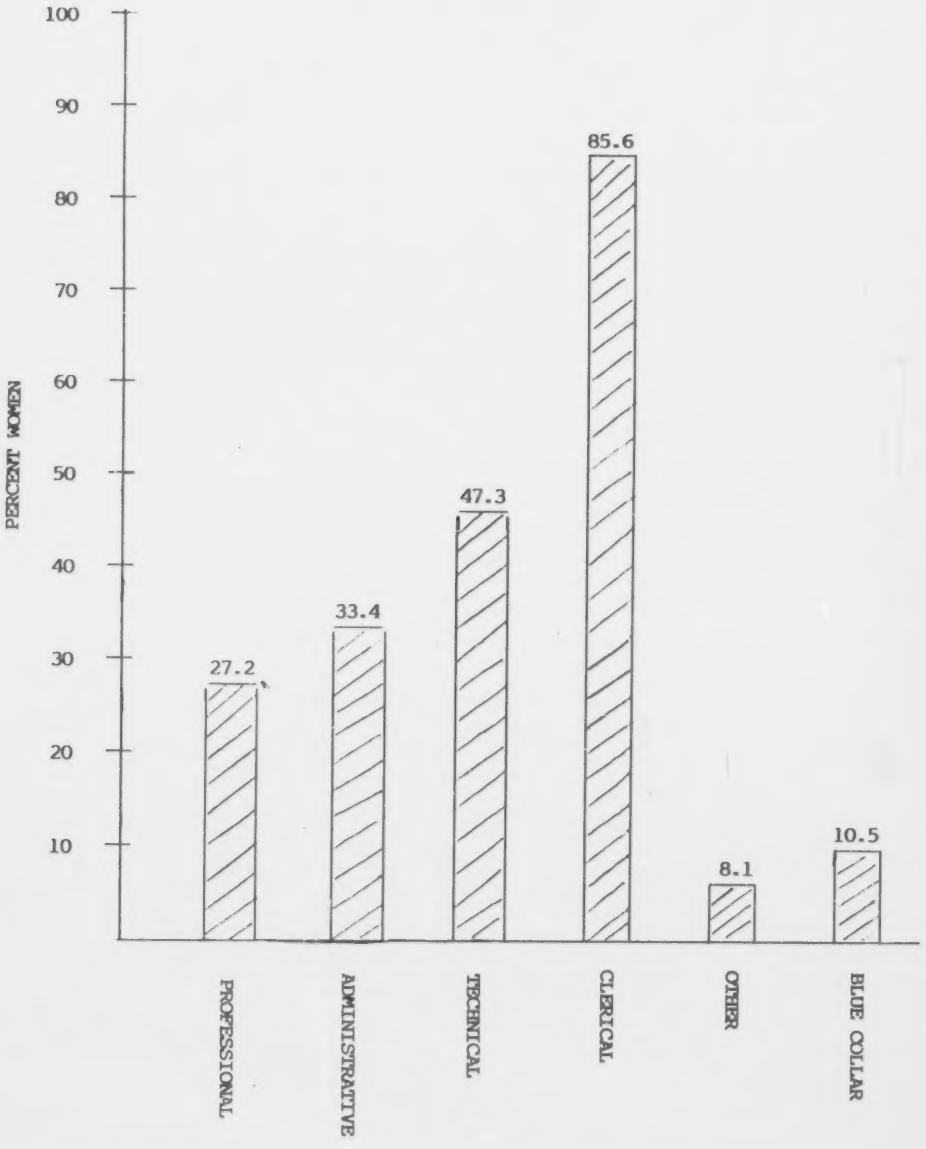


FIGURE III. DISTRIBUTION OF WOMEN WITHIN WHITE COLLAR OCCUPATIONS IN THE FEDERAL GOVERNMENT.

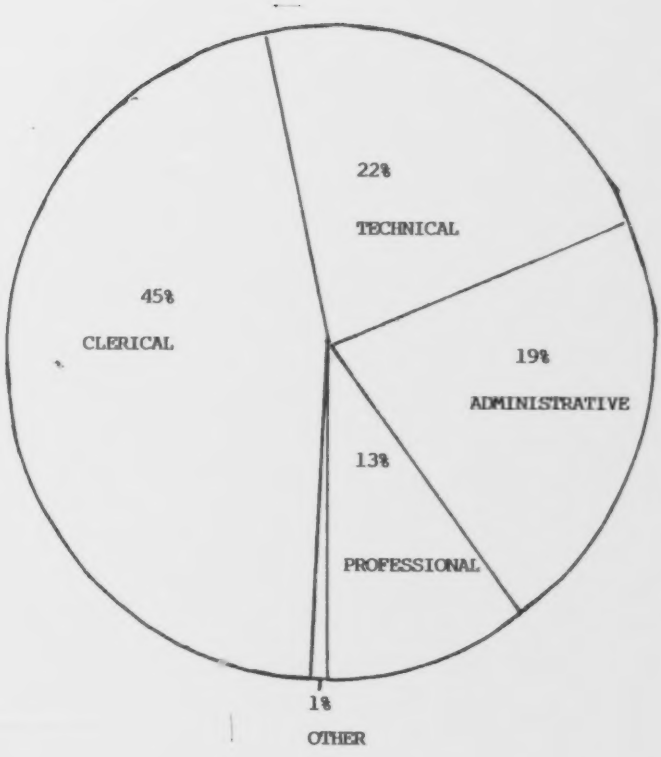
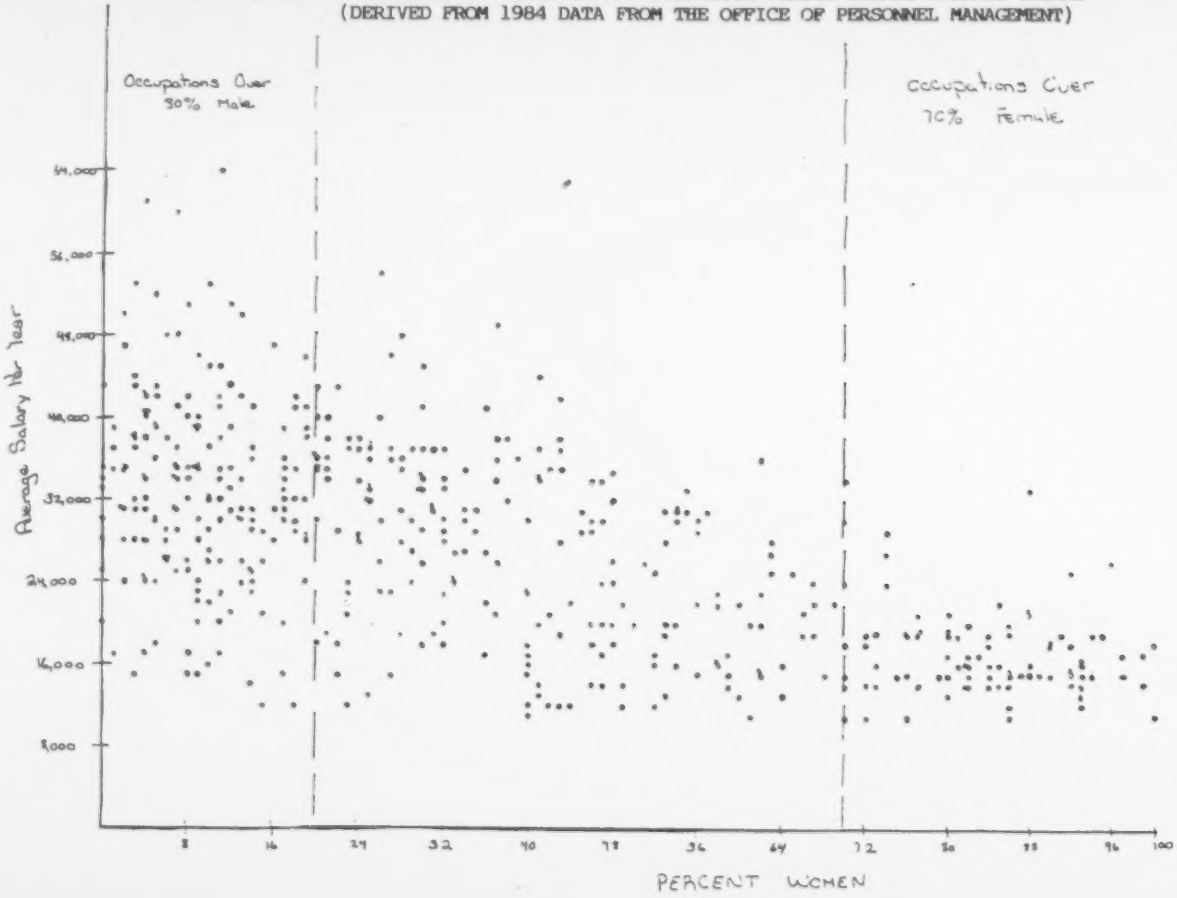


FIGURE IV. PERCENTAGE OF WOMEN IN AN OCCUPATION VERSUS YEARLY AVERAGE SALARY (DERIVED FROM 1984 DATA FROM THE OFFICE OF PERSONNEL MANAGEMENT)



BPW usa

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Statement by Mary Ray Oaken
National President
The National Federation of Business and Professional Women's Clubs, Inc.

submitted to the
Subcommittee on Federal Services, Post Office and Civil Service

of the

U.S. Senate

April 22, 1987

On behalf of BPW/USA's 140,000 members, I strongly urge you to support S. 552, the "Federal Employee Compensation Equity Act of 1987." Founded in 1919, BPW/USA is the world's oldest and largest organization of working women. Our members live in every Congressional district in the United States and work to promote full participation, equity and economic self-sufficiency for working women.

The bill, introduced by Senators Dan Evans (R-WA) and Alan Cranston (D-CA), proposes to "improve the efficiency of the Federal classification system and to promote equitable pay practices within the Federal government and for other purposes."

Congress established the present federal pay system in the Classification Act of 1923 with the understanding that dissimilar jobs would fall into the same classification at each grade level. Using the merit system principle, all positions classified under the General Schedule were divided into eighteen grades according to each job's level of difficulty, responsibility, and the qualifications required to perform it. Thus, at each grade level, though the specific duties of jobs may differ, the work performed is of equal value.

The federal wage-setting system has <u>never</u> been studied to determine if non-job-related factors, such as sex and race, affect federal employees' grade levels and wages.

The study proposed by Senators Evans and Cranston would authorize an independent study of the federal wage and

classification system. A bi-partisan commission, headed by an independent consultant, would conduct this study of the federal workforce. The study would show whether sex, race, or national origin are factors affecting the wages of federal workers.

Although women comprise nearly half of the workers in the General Schedule (GS) classification system, seventy-three percent of all women are in GS grades one through eight. The average salary for federal women workers in the GS system is $18,800 per year as compared to $27,720 per year for men. These salary figures are even lower for Blacks and Hispanics in the federal government. Occupational crowding of women in certain job categories, and current wage data, indicate the presence of discriminatory practices in the federal government.

We believe that the time has come to eradicate all unfair and discriminatory pay practices. Federally employed women can expect to earn only 63 percent of the wages of federally employed men. We believe some of this wage gap can be attributed to occupational segregration within the federal workplace. The federal government has not examined its pay and classification system in sixty-four years.

The federal government is far behind many state and local governments and a growing number of private sector companies who have already begun to investigate and correct sex- and race-based wage discrimination. Twenty-eight states have conducted or are conducting studies similar to the one mandated by this bill. Seventeen states have already begun to make pay equity

adjustments. Only four states, like the federal government, have taken no action in this matter.

In addition to the local and state studies, many lawsuits have been filed to correct pay inequities. In one case involving the federal Equal Pay Act, U.S. Equal Employment Opportunity Commission v. The State of Delaware, thirteen nurses were awarded $89,000 in back wages. The case involved Public Health Nurses, all women, who were being paid lower wages than a male physician assistant for performing substantially equal work, requiring equal skill, effort, and responsibility under similar working conditions.

It is time we correct pay inequities in this country. BPW/USA strongly supports S. 522 and believes that job evaluation and appropriate classification based on the results of the evaluation are basic components for achieving equity and career growth for women in government.

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INTERNATIONAL PRESIDENT

RICHARD W. CORDTZ
INTERNATIONAL SECRETARY-TREASURER

STATEMENT

OF THE

SERVICE EMPLOYEES INTERNATIONAL UNION

AFL-CIO, CLC

ON

THE FEDERAL EMPLOYEE COMPENSATION EQUITY ACT

OF 1987 (S. 552)

SUBMITTED TO:

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

GOVERNMENTAL AFFAIRS COMMITTEE

UNITED STATES SENATE

MAY 1, 1987

STATEMENT OF

SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

ON

THE FEDERAL EMPLOYEE COMPENSATION ACT OF 1987

The Service Employees International Union (SEIU), representing 850,000 members, welcomes the opportunity to submit our views on S.552, the "Federal Employee Compensation Act of 1987." Among SEIU's members are 45,000 federal employees who are predominantly low-wage service and healthcare workers.

SEIU reaffirms its longstanding commitment to eliminating sex and race discrimination and ensuring that all workers receive equitable pay for the jobs they perform. We strongly support S.552 as a first step in achieving pay equity for federal employees.

For SEIU, pay equity is a critical necessity affecting virtually all of our members who work in the service sector, which has long profited from historic wage discrimination against women and minorities. The service industries employ more than four out of five working women and a high percentage of minorities.

Over half of our union's members are women working in healthcare, clerical jobs, building maintenance, and public employment. One out of every three SEIU workers is a minority.

The urgent need for a federal pay equity study is clear. Nationwide, women earn 64 cents for every dollar earned by men working full-time, year round jobs. Adjusting for differences in the weekly hours worked by men and women on these jobs only closes the pay gap by 4 cents.

This pattern is replicated at the federal level. Women employed by the federal government make 63 cents for every $1.00 earned by men. Historically, the federal government led the way in the hiring of women, but by paying these women less than the men who had previously performed the jobs, the government established a pattern of discriminatory wages for jobs held predominantly by women.

For example, in 1868 the Library of Congress only employed men. Then the Librarian of Congress thought of a way to save money:

> "Under competitive tests, I think half the number here employed might usefully be women and the resulting economy to the government would be great. For example, I know of educated and practically industrious women, who could do all that assistant librarians receiving $1,200 to $1,800 now do, and who would think themselves well paid at $1,000 per year."

This pattern continues today with women concentrated in a few jobs -- 55% of female federal employees squeeze into just 8% of the federal job classifications -- and these jobs are ranked at the lower grade and pay scales.

SEIU is particularly pleased to see that S.552 includes a provision for an analysis of race-based wage disparities. Recent studies have shown that pay equity is an issue of both sex and race discrimination.

This spring, the National Committee on Pay Equity released a report, "Pay Equity: An Issue of Race, Ethnicity, and Sex." This research showed that "race, ethnicity, and sex are all significant factors in setting pay." The researchers found that wages in the occupations where minorities are disproportionately represented are significantly lower than those for white men.

Minority women suffer the double effects of race and sex discrimination. The National Committee on Pay Equity's study found that occupations with high concentrations of minority women are the lowest paid of all occupations.

Technical Comments on the Federal Pay Equity Study

Based on SEIU's considerable experience with job evaluation techniques, we have several technical comments regarding the federal pay equity study, as proposed in S. 552.

1. We are pleased to see that the study will not be limited to an economic analysis. We are strongly opposed to the use of economic analysis alone as a way to establish relative job valuations for several reasons. First, the public sector pay structure has never been closely linked to market demand and supply. Instead, public employers overwhelmingly rely on job evaluation to classify employees and set pay rates. Furthermore, an economic analysis will not supply the federal government with the key information needed -- which jobs are sex and race-segregated and how much money is needed to achieve wage parity -- our bottom line.

We are not, however, opposed to a combined analysis of factors covering both job content and individual characteristics such as seniority, provided the latter are job-related. This would, for example, exclude age and marital status from any analysis. We should also point out that many pay equity studies control for factors, like seniority, by using entry level wage rates, which are not affected by seniority.

2. In accordance with standard survey methodology, the study methods should be pretested on a small sample of classifications to determine if the study design is technically correct and will provide the sought after information.

3. The federal government already uses a number of job classification systems to compare jobs and to establish appropriate pay rates. As the General Accounting Office (GAO) noted in its April 22, 1987 testimony before your committee, a single job evaluation system must be developed in order to compare federal jobs which are currently evaluated under different systems. The federal government will benefit from the development of a single job evaluation system, both because it is key to a

successful pay equity study and because it will facilitate a variety of personnel procedures. According to the GAO, 34 states have adopted a single job evaluation system to set pay for their classified jobs.

In designing a single job evaluation system, the federal government should be careful to avoid problems that are sometimes found in other job evaluation systems. For instance, one of the most extensively used job evaluation systems in federal government, the Factor Evaluation System, has come under heavy criticism for the sex and race bias inherent in the factors and factor weights.

For example, occasional heavy lifting found in male-dominated jobs should not arbitrarily be weighted more heavily than frequent light lifting found in some female-dominated jobs. Likewise, the heavy lifting involved in many female-dominated jobs such as healthcare occupations which require lifting of patients must not be overlooked. Similarly, factors such as the hazards related to VDT use by clerical workers and stress in human services work should be accounted for in the job evaluation system. The study's job evaluation system must be designed to be bias free.

In a similar vein, our experience has shown us that most job evaluation techniques overemphasize management aspects of a job above skill, know-how, or working conditions, thus undervaluing female and minority-dominated jobs. Moreover, most try to recreate existing relative wage patterns as closely as possible, which are distorted by sex and race discrimination. The federal job evaluation system should be designed to eliminate these problems.

4. In determining which jobs should be considered disproportionately occupied by minority group members, our experience suggests that the impact of race discrimination is found in salaries for occupations in which minorities comprise a larger percentage of employees than in the workforce as a whole. Therefore, we believe that jobs in which there is a higher percentage of minorities than in the

federal workforce as a whole should be examined for potential race-based wage disparities.

5. We strongly support the bill's language that establishes a Commission on Compensation Equity to carry out the study and agree that this commission should include a broad spectrum of policy makers and representatives from affected organizations. S. 552's provision for the appointment of three labor representatives to the Commission will both improve the study's quality and deepen the commitment of affected parties to successfully implement its findings. Above all else, our experience shows that workers must see any new system as "fair", especially if wage and classification changes are the result.

6. The Commission should also place a high priority on obtaining accurate, up-to-date job information on federal job classifications. Periodic updating of job information is an essential ingredient of all personnel systems and is particularly crucial when undertaking a job evaluation study. Job evaluations will be meaningless unless they reflect the current duties and responsibilities of each job classification. Employees are the best experts on the content of their jobs, and their input is essential to this process.

SEIU Experience With Pay Equity and Job Evaluation

The Service Employees International Union has been involved in a variety of efforts aimed at achieving pay equity in state and local jurisdictions, as well as in the private sector. We have found that legislation, litigation, and collective bargaining are all important methods to pursue in the fight for pay equity.

Carefully conducted job evaluation studies have been an effective tool in achieving pay equity through collective bargaining. For instance, SEIU has been instrumental in job evaluation and pay equity studies of numerous employers including Santa Clara County, California, the University of New Haven in Connecticut, and the

State of Oregon. We are participating in ongoing job evaluation and pay equity studies in the State of Michigan, the State of New York, and the State of New Hampshire.

In all of these efforts, we have demanded full union participation. We have also demanded that the results of any such studies be the subject of collective bargaining.

Among SEIU's many other pay equity activities is our ground-breaking lawsuit against the County of Los Angeles, the first lawsuit of this type which alleges both race and sex discrimination.

Some of our greatest pay equity victories, however, have been won at the bargaining table. Following a public referendum which showed enormous support for pay equity, the City and County of San Francisco reached a pay equity agreement with SEIU Locals 790, 250 and 535. Under the agreement, San Francisco employees who work in jobs filled predominantly by women and/or minorities will receive pay equity raises averaging 4.5% and 5% in 1987 and 1988, respectively.

SEIU Local 535 in Contra Costa County, California concluded negotiations in February 1986 on a contract including a 3% pay equity wage adjustment in each year of a two-year agreement. This settlement came on top of an earlier pay equity agreement reached in 1984. In total, Contra Costa County will spend $5 million to eliminate pay inequities.

Conclusion

In all of our pay equity activities, we have found over and over again that the jobs held mainly by women and minorities are paid substantially less than jobs held mainly by men. Also, we've found that compensation often has little to do with skill, effort, responsibility, or working conditions. This is supported by all of the studies which consistently find significant underpayment of female-dominated and disproportionately minority jobs. The reason for these inequities is simply historic,

ingrained sex and race discrimination.

It is time for the federal government to join the many state and local governments and private companies who are addressing this issue. The Federal Employee Compensation Equity Act of 1987 is a long overdue, first-step toward economic justice for federal employees. SEIU urges you to pass S.552 without delay.